

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A Report from the Secretary of the Navy,

WITH

Copies of the Proceedings of the Courts Martial,

IN THE CASES OF

Lieutenants Weaver and Conner.

FEBRUARY 14, 1825.

Read: Ordered that it lie upon the table.

WASHINGTON:

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1825.

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To the House of Representatives of the United States:

In compliance with a Resolution of the House of Representatives, of January the 5th, I herewith transmit a Report from the Secretary of the Navy, with copies of the proceedings of the Courts Martial in the cases of Lieutenants Weaver and Conner.

JAMES MONROE.

Washington, Feb. 11th, 1825.

NAVY DEPARTMENT,

February 9th, 1825.

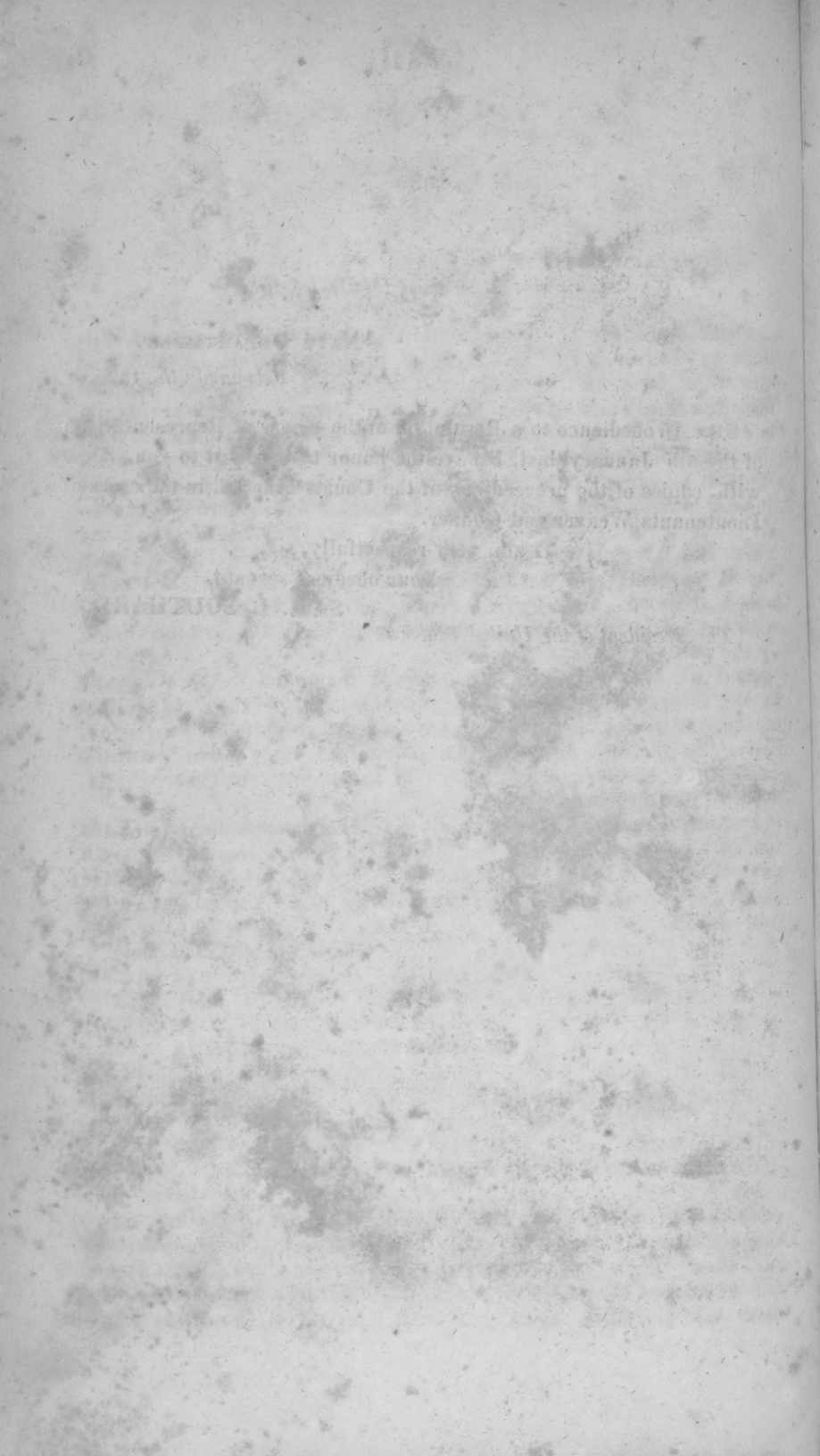
SIR: In obedience to a Resolution of the House of Representatives of the 5th January last, I have the honor to transmit to you, herewith, copies of the proceedings of the Courts Martial, in the cases of Lieutenants Weaver and Conner.

I am, very respectfully, sir,

Your obedient servant,

SAM. L. SOUTHARD.

The President of the United States.



A.

TO WILLIAM BAINBRIDGE, Esq.

Captain in the Navy of the United States.

Certain charges of misconduct having been alleged against William A. Weaver, a Lieutenant in the Navy of the United States, and others, a General Court Martial, to consist of Captain William Bainbridge, President, Captains Jacob Jones, Lewis Warrington, William M. Crane, John D. Henley, Jesse D. Elliot, and Master Commandant George C. Read Members, and Masters Commandant Wolcott Chauncey, and William B. Finch, Supernumeraries, or any five, or more, of them, is, hereby, authorized and ordered to assemble on board the United States' ship Washington 74, at the Navy Yard, Brooklyn, in the state of New York, on Monday, the fifteenth day of November, for the trial of the said persons, for the offences for which they do severally stand charged; which charges, together with the testimony in support of them, will be laid before the Court, by the Judge Advocate.

And Richard S. Cox, Esq. is hereby appointed Judge Advocate to the Court hereby ordered to assemble; and if he should decline acting, the said Court will appoint such other suitable gentleman, learned in the law, to discharge the duties of Judge Advocate to the said Court, as they, or a majority of them, may, in their wisdom, deem fit and proper.

In faith whereof, I have hereunto signed my name, and affixed the seal of the Navy Department of the United States, this twenty sixth day of October, in the year of our Lord one thousand eight hundred and twenty-four, and of the Independence of the United States the forty-ninth.

SAM. L. SOUTHARD.

B.

Charge and specifications against William A. Weaver a Lieutenant in the Navy of the United States.

CHARGE.—Fraudulent and unofficer-like conduct.

Specification 1st. For that the said William A. Weaver, on or about the twenty-fourth day of August eighteen hundred and twenty-one, then being a lieutenant in the naval service of the United States, and borne on the books of the ship Franklin in that capacity, did enter into a certain agreement with Stephen Whitney, Hoyt and

Tom, and Elisha Tibbits of the city [of New York, in manner and form as follows.

“Articles of agreement made this twenty-fourth day of August one thousand eight hundred and twenty-one, between Stephen Whitney, Hoyt and Tom, and Elisha Tibbits, owners of the ship America of the first part, and William A. Weaver of the Navy, of the second part, witnesseth: That, whereas it has been represented by the party of the second part, to the parties of the first part, that Commodore Stewart in the Franklin seventy-four, is now about to proceed in said ship to Lima, in the Pacific Ocean, and that Commodore Stewart being the particular friend of the party of the second part, and desirous of aiding him, would give particular protection to a ship and cargo in which he might be interested, to said port of Lima; and for greater security would appoint a place of rendezvous at St. Juan Fernandez or elsewhere; now therefore, for and in consideration of the said protection so as aforesaid to be given by Commodore Stewart in the Franklin, and the services of Lieutenant Weaver, it is agreed as follows.

First, the parties of the first part agree to load their ship the America, with flour and salted provisions, and to put her under the command of captain Henry L. de Koven with orders to sail and proceed without delay to the port of Lima, touching at such place as may be fixed on (say at St. Juan Fernandez) for rendezvous with the Franklin, and thence under her protection and direction to Lima; it is also understood and agreed that Lieutenant Weaver is to put on board said ship a quantity of stores, belonging to the Franklin, on which a freight is to be paid the concern, and to go himself in the ship, and for her greater security is to represent her as a store ship bound to the Pacific Ocean, with stores for the Navy of the United States, and himself as an officer of the Navy in charge of such stores. In consideration of all which services and protection so to be afforded, it is agreed that the said Captain H. L. de Koven shall pay to the said party of the second part, at Lima or other near port, one fifth part of the nett profits of the voyage out, after deducting the cost and charges of the cargo including insurance and interest of money, and fourteen thousand six hundred dollars freight of the same. It is also agreed that Lieutenant Weaver may put a private adventure on board, if not exceeding “one ton outward and the same amount home, in the ship, should she return to the United States direct. It is further understood that Lieutenant Weaver and Commodore Stewart are to afford to Captain de Koven every facility and protection in their power, in leaving Lima, whenever the ship is ready to sail. Second. It is further agreed, that, if it shall be found impracticable or not prudent, in the opinion of Captain de Koven, to enter the port of Lima, it is understood and agreed, that the ship may go to some neighboring port, either in Peru or Chili.” Thereby agreeing for his individual profit to employ his official character and situation for deception and fraudulent purposes, and agreeing to the employment of the public armed vessels of the United States in objects of private emolument.

Specification 2d. In carrying into execution, in whole, or in part, the said agreement, and thereby employing his official character in the fraudulent and deceptive protection of private speculation.

Specification 3d. In having, for his private emolument, represented to said Stephen Whitney, Hoyt and Tom, and Elisha Tibbits, that Commodore Stewart, then in command of the Franklin 74, bound to the Pacific Ocean, was the particular friend of the said Weaver, and desirous of aiding him would give particular protection to a ship and cargo, in which he might be interested, to the port of Lima, and for greater security would appoint a place of rendezvous at St. Juan Fernandez, or elsewhere, without having any authority to make such representations, thereby injuring the character of said Commodore Stewart, and the reputation of the Naval service of the United States.

Specification 4th. In absenting himself from his situation on board the said ship the Franklin, during the entire period of her cruise to the Pacific Ocean, from the month of September, 1821, to the arrival of the said ship in New York in the month of August, 1824, without any lawful or proper excuse for such absence, and being engaged during the said period in attending to his private affairs.

Specification 5th. In claiming of the Government of the United States full pay and rations for the whole period of the cruise of the Franklin aforesaid, as one of the Lieutenants of the said ship, whereas the said William A. Weaver, during the said time, was engaged in his own private business, and performed no duty on board the Franklin or in any other public service.

RICHARD S. COXE, *Judge Advocate.*

Minutes of the proceedings of a General Court Martial, assembled on board the United States' ship the Washington, lying at the Navy Yard at Brooklyn, in the state of New York, on Monday the fifteenth day of November, in the year of our Lord one thousand eight hundred and twenty-four, by order of the Hon. Samuel L. Southard, Secretary of the Navy of the United States, for the purpose of trying, according to law, William A Weaver, a Lieutenant in the Navy of the United States, upon certain charges preferred against him.

PRESENT—Captain William Bainbridge, *President.*

Members—Captains Jacob Jones, John D. Henley, Jesse D. Elliot, Master Commandant George C. Read.

Supernumeraries—Masters Commandants Wolcott Chauncey, William B. Finch.

William A Weaver, a Lieutenant in the Navy of the United States, appeared in Court to answer the charges preferred against him. The Warrant of the Honorable the Secretary of the Navy, for convening this Court, directed to William Bainbridge, Esq. a Captain in the

Navy of the United States, bearing date the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and twenty-four, was then read by Richard S. Coxe, who is in and by said warrant appointed the Judge Advocate of this Court; which said warrant is hereunto annexed, and marked A.

The accused, William A. Weaver, appeared, and on being asked whether he had any objections to any of the members of the court, declared that he had none. The oath prescribed by the act of Congress, in such case made and provided, was then duly administered, to the President, Members, and Supernumeraries, by the Judge Advocate, and the President then administered to the Judge Advocate, the oath, prescribed by the act of Congress, to be taken by him. The charge and specification were then read to the accused, by the Judge Advocate, and the same are annexed to this record, marked B. And Lieutenant Weaver then stated to the court that he wished to procure the attendance of certain witnesses, whose testimony would be important in his defence, and to take the depositions of others in the City of Washington, by a commission; and that he also wished the assistance of counsel in conducting his case and nominated David B. Ogden and Pierre C. Van Wyck, Esqs. as the counsel whom he had employed. Whereupon, the court was cleared, to deliberate on the said applications, and after some time, was opened, when Lieutenant Weaver was informed, that the court would agree to his application; and he was directed to prepare, and hand to the Judge Advocate, a list of such witnesses as he should require, and to prepare interrogatories to be attached to the commission to be sent to Washington. He was likewise informed that his counsel would be admitted to appear in court and assist in his defence, under the following restrictions and conditions: The counsel may be present during the examination and cross-examination of witnesses, and assist the accused in conducting the same; but all questions must be proposed in writing, and handed to the Judge Advocate to be submitted to the court, and be read to the witnesses by the Judge Advocate; and all motions to be made by the accused, must, in like manner, be reduced to writing, and submitted to the court by the Judge Advocate. The witnesses not being present, and Captains Warrenton and Crane not having arrived, the court adjourned until to-morrow morning, at half past nine o'clock.

TUESDAY, *November 16, 1824.*

The court met, pursuant to adjournment of yesterday.

Stephen Whitney, a witness, was then introduced by the Judge Advocate, and duly sworn, according to law; and the charge and specifications were then read to him, and he was examined as follows:

Question. Are you the Stephen Whitney mentioned in the charge and specification just read?

Answer. I am.

Ques Have you the original of the agreement therein set forth?—
if yea, produce it.

Ans. I have. (the paper produced.)

The accused admitted the execution of the said instrument; the same was then read in evidence to the court, and hereunto annexed, (marked No. 1.)

Ques. Did Lieut. Weaver proceed in the America to the Pacific, in pursuance of said contract?

Ans. Yes.

Ques. Did he receive the whole, or any, and what part of the compensation, therein mentioned?

Ans. He received \$12,365, as appears by the accounts of Captain De Koven, at Lima.

Ques. Did Lieut. Weaver make the representation, relating to Commodore Stewart, set forth in the third specification? To whom, and where?

Ans. He made none such to me. Mr. Tibbets had the charge of the ship, and the fitting her out.

Ques. (*By the court.*) Have you any accounts or receipts of Lieut. Weaver, admitting the receipt of the money?

Ans. I have none. Mr. Tibbets probably has—he has all the accounts and papers relating to the voyage.

Cross examined by the counsel for the accused.

Ques. Were you introduced by Lieutenant Weaver to Commodore Stewart before the contract was executed?

Ans. I went with Lieut. Weaver to see Com. Stewart one day.

Ques. Did you not insist upon seeing and conversing with Com. Stewart before you would make the agreement with Lieut. Weaver?

Ans. No.

Ques. Had you any conversation with Com. Stewart upon the subject of your intended agreement with Lieut. Weaver? What passed in that conversation?

Ans. I had none.

Ques. Had not Mr. Tibbets or Mr. Hoyt, in your presence, such a conversation?

Ans. No.

Ques. What was the object of your going with Lieut. Weaver to be introduced to Com. Stewart?

Ans. Com. Stewart was fitting out the ship to go round there; and whether Lieut. Weaver asked me, or I asked him, I know not—I had no object.

Ques. Did not Lieut. Weaver leave you and Mr. Hoyt alone with Com. Stewart?

Ans. Not to my recollection: I think I went alone with Lieut. Weaver to Com. Stewart.

Ques. How long did you remain with the Commodore? Had you no conversation with him upon the subject of the voyage? If you had, what passed in that conversation?

Ans. I was there a few minutes only. I think several other persons were in the room, and nothing particular passed, farther than

that we were loading a ship for a voyage to the same place to which he was going.

Ques. At what time was the contract signed, and where? Was it not on the night of the 3d of October? At what time were the Navy Stores put on board? Were they not, to your knowledge put on board the day before the contract was signed, and only two days before the ship sailed?

Ans. I think the contract was signed just before the ship sailed, whether the night before, or two nights before, am not certain, at Mr. Tibbet's house; the stores were put on board about two days before; cannot say whether the contract was signed before the stores were put on board or after: it was about the same time.

Ques. Did you consider you was making an illegal contract?

Ans. I had no idea that it was illegal on my part: as to Lieut. Weaver's part, I had nothing to do with it.

The Judge Advocate then offered, in evidence, an authenticated copy of certain proceedings in the Courts of Chancery, of the state of New York, on a bill filed by William A. Weaver, against Stephen Whitney and others; which was read, and annexed to the record, and marked No. 2.

Commodore Charles Stewart was then offered as a witness by the Judge Advocate, who, being duly sworn according to law, was examined as follows:

Ques. Did you command the United States ship Franklin on her cruise to the Pacific, from Sept. 1821, till her return to the United States in August 1824?

Ans. Yes.

Ques. by the Court. Did you authorize Lieut. Weaver to use your name as is stated in the specification?

Ans. No: not to the extent set forth in the specification.

Ques. How far did you authorize Lieut. Weaver to use your name in making the representations set forth in the specifications?

Ans. Mr. Weaver was authorized to say he would have the benefit of my advice, and judgment, whenever he should require it, and the benefit of any protection I could afford him, compatible with the instructions of the Government, which, as I had not received them at the time, I could not say what they would be. That I understood I was going out for the purpose of affording general protection in those seas; but nothing was said as to Lima, Valparaiso, or any other port in particular that I recollect, further than that I thought I should stop at Rio, and certainly go to St. Juan Fernandez, to put the ship in order.

Ques. Did the Franklin fall in with the ship America before she arrived at Lima? if yea, where did she fall in with her?

Ans. We met her at Rio, where she arrived a few days after us, she was off Valparaiso with us, but did not enter that port.

Cross examined by the counsel for the accused.

Ques. Was Lieut. Weaver absent from the said ship by your leave?

Ans. He was until the arrival of the Franklin at Lima, August, 1822. His application and my reply, and subsequent orders, appear

in the letters now submitted, (read to the Court, annexed to the record, and marked No. 3.) by Commodore Stewart; also two letters from the office of the Commissioners of the Navy, of September 24, 1821, one addressed to himself, the other to Mr. Fitzgerald, purser; which were read, annexed to the record, and marked No. 4.

Ques. Did you, while in the Pacific, receive any letters from Lieut. Weaver, in relation to his joining the Franklin? if you did, will you produce them?

Ans. I received a number of letters from him while I was there on different subjects. The letters were then produced, and the further consideration of the question postponed till they might be examined and selected.

Ques. Did you not consider yourself bound, while in the Pacific, to protect all American vessels found there pursuing a lawful commerce?

Ans. Certainly; I felt myself bound to do so under my instructions.

Ques. Did you not declare to Lieut. Weaver that you would give every protection and advice in your power, not inconsistent with your duty, to any ship in which he might be interested? Did you not consider Lieut. Weaver as at liberty to mention that declaration?

Ans. Yes; I told him he might always command my advice, and he was at liberty to mention it.

Ques. Did you, before the America left New York, see Mr. Tibbets, Mr. Hoyt, and Mr. Whitney; all or any of them, and which? had you any conversation with them upon the subject of the intended voyage of the America? if yea, what passed in that conversation?

Ans. Mr. Weaver brought one of the gentlemen down with him to Mrs. Keyeses, where I lodged and introduced him; cannot recollect his name; he was the active partner and ship's husband; he said Mr. Weaver had mentioned I was friendly disposed towards him, and would give him permission to go out in the ship. I told him I was a friend to Mr. Weaver, and would give him permission to go out in the ship, and so far as my instructions would allow, he might command my services and best advice; but what those services might be, I could not tell, as I had not received my instructions. I further informed him, that the destination of the ship might be changed, and in any arrangement with Mr. Weaver, he must take those circumstances into consideration. He replied, that if this voyage is gone into, it must go on whether the Franklin went to the Pacific or not. The other two gentlemen I was introduced to promiscuously in the streets; had no acquaintance with them, on which occasion one of them expressed a wish I should take part in the concern; to which I replied, I had no funds to appropriate to that object.

Ques. Were you interested in any shape or manner in the voyage of the ship America?

Ans. None whatever.

Ques. Did you not receive an order from the Secretary of the Navy to stop the pay of Lieut. Weaver, about the time of the sailing of the Franklin?

Ans. I received an order, dated August 24, 1821, from the Navy Department (produced, and the question and answer deemed irrelevant by the Court, and overruled.)

Ques. Are you acquainted with Lieut. Weaver's standing, abilities, and general conduct in the service? If so, be pleased to state fully to the Court what are his merits as an officer?

Ans. Mr. Weaver served two years and a half with me in the Mediterranean, and his conduct was such as to give me the highest opinion of his capacity and merits. I had occasion to employ him sometimes in public services, out of his regular duties as an officer of the ship, sometimes attended with considerable personal hazard: all which he performed to my satisfaction.

Ques. Whether Lieut. Weaver's conduct as an officer has ever suffered impeachment before?

Ans. Not that I know of.

The Judge Advocate then produced and read in evidence to the Court—

A certified copy of a postscript of a letter from Commodore Stewart to the Secretary of the Navy, dated New York, July 8th, 1821, annexed and marked No. 5.

A certified copy of a letter from the Secretary of the Navy to Lieut. Weaver, dated 23d July, 1821, annexed and marked No. 6.

A certified copy of a letter from Lieut. Weaver to the 4th Auditor, dated New York, 25th Sept. 1824, annexed and marked No. 7.

A certified copy of a letter from Lieut. Weaver to the 4th Auditor, dated New York, 10th Oct. 1824, annexed and marked No. 8.

A certified copy from the muster rolls of the Franklin, annexed and marked No. 9.

Muster roll No. 3, of the Franklin, (an extract made by, and added to, the certified copy from the Department.)

The Judge Advocate then stated to the Court that the evidence for the prosecution had closed.

Mr. Weaver produced certain interrogatories addressed to his Excellency the President of the United States, to be annexed to a commission to be sent to Washington; whereupon, it was suggested, that it might be more respectful to the President, and agreeable to the Court, if it could be arranged that the interrogatories should be forwarded to the President by the Judge Advocate; and it should be intimated to him to be the desire of the Court and of the accused, that he should reply to the interrogatories in a letter to the Judge Advocate, which letter should be received as evidence. To this the accused expressed his concurrence, and the Judge Advocate was directed to write accordingly; and the Court adjourned until half past 9 to-morrow morning.

WEDNESDAY, November 17th.

The Court met, pursuant to the adjournment of yesterday.

The Judge Advocate informed the Court that he had written to the President, enclosing the interrogatories, and requesting a reply with as little delay as possible.

Captain George W. Rodgers sworn on the part of the accused.

Q. What is the character of Lieut. Weaver as an officer in the service? And have you had an opportunity of becoming acquainted with his merits as an officer?

Ans. I have always considered Lieut. Weaver as an officer of merit, I have had in a great degree an opportunity of becoming acquainted with his merits, while he was under the command of Commodore Stewart in the Mediterranean; he acted as his aid, and believe he was generally viewed as an intelligent and correct officer.

Ques. Are you acquainted with the manner in which Lieut. Weaver fitted out the Franklin 74 in 1821; was it well done or otherwise?

Ans. I fitted out the Franklin myself, Mr. Weaver was acting under my orders, and his department was that of a correct officer.

Ques. What is Lieut. Weaver's character for integrity and honor as an officer?

Ans. I have never heard it impeached as an officer, without referring to the late proceedings in the Court of Chancery in the state of New York.

Edward Fitzgerald, a purser in the Navy of the United States, being produced, sworn, and examined, testified as follows:

Ques. Are you the purser of the Franklin, and were you purser during her last cruize?

Ans. I am now, and was then.

Ques. Was an entry made on your books that Lieut. Weaver was absent without leave during the cruize, and if so, when, and at what place was such entry made?

Ans. I, yesterday, took the book to Commodore Stewart for his approval, it not having been before approved, and he directed the entry then to be made; "absent without leave from the 1st August, 1822."

Ques. Did you not make a statement, to the Secretary of the Navy, of Lieut. Weaver's account? When and what?

Ans. I made one to the Fourth Auditor, made up to the 30th September, 1824, inclusive, which account the Secretary informed me had been submitted to him.

Ques. Was not Lieut. Weaver kept on your books as entitled to pay during the cruize until the arrival of the Franklin at New York?

Ans. He was kept on the books.

Ques. Can you produce the statement of pay made to the Fourth Auditor, or a copy? If so, produce it.

Ans. I left it in the office of the Fourth Auditor, and have no copy; it stated the account for full pay and rations to the 30th September, 1824.

Ques. Was that statement made in the ordinary course of your duties, or by the special request of any officer of the Navy Department?

Ans. Mr. Weaver, I understood, had sent on for a settlement of his account, and at the request of Mr. Gilliss, the chief clerk of the

Fourth Auditor, I made out the account at Washington from the books there; it was not approved by Commodore Stewart or any other person. The muster rolls and pay rolls had been approved by Commodore Stewart, up to the 31st December, 1823. There was no application to me by Mr. Weaver, so to make out the account; he had no knowledge of it until after my return, when I informed him I had made it to that date.

Ques. Did you not consider Lieut. Weaver, according to the practice of the service under similar circumstances, entitled to full pay?

Ans. I did; I always considered him as attached to the vessel.

Ques. At what time were the purser's and hospital stores placed on board the America?

Ans. Sometime in the month of September the slop clothing and hospital stores were placed on board; cannot say exactly when, or how long before the America sailed; some short time before she sailed.

Ques. Were they not so shipped on board the America in consequence of the want of room in the Franklin?

Ans. Yes.

Ques. Were the stores safely delivered at Lima and taken on board the Franklin?

Ans. They were delivered at Callao.

Question by the Judge Advocate.

Has the purser of a ship any authority to strike off the name, or suspend the pay, of an officer attached to the ship whose name stands on the muster rolls, without orders from the commander, under any, and what, circumstances?

Ans. He has no authority under any circumstances.

Ques. You have said that you have considered Lieut. Weaver, according to the practice of the service, under similar circumstances, entitled to full pay. In what circumstances did you consider him as standing?

Ans. I considered him as attached to the vessel at the time.

Ques. By the phrase "attached to the vessel," do you mean any thing more than that his name appeared on the muster rolls, and you had received no directions in relation to his case from Commodore Stewart?

Ans. Nothing more.

Ques. (By the Court.) Does Lieut. Weaver stand on the books of the ship as absent on leave of absence?

Ans. He does not; on the first return made to the Department he is marked "on leave of absence to join the ship in the Pacific;" on one return he is marked "in charge of stores at Callao," Commodore Stewart remarked "he only knew him there officially; that, if he had returned to the United States it was on his own responsibility;" this remark was made by the Commodore when he directed the entry to be made of his being in charge of stores.

Ques. Can you recollect the date of that entry?

Ans. It was some time in 1823, I think, after Mr. W. had returned to the United States.

Ques. Were there any public stores on shore, at the time that entry was made?

Ans. None that I know of. We had taken on board previously all the stores that had been brought out.

Ques. When taken on board, were these stores taken from the charge of Lieut. Weaver, or from the stores of a private merchant?

Ans. They were taken from the store-house of a private merchant, Mr. Sarrutia, with whom they had been stored by Lieut. Weaver.

Doct. C. C. Yates, a witness, produced, sworn, and examined, on behalf of the accused, testified as follows:

Ques. Did you attend Lieut. Weaver as a physician—at what time, and where, during the winter of 1822, and 1823? State the nature of his illness, and whether it rendered him unfit for duty.

Ans. I called to see him in the winter of 1822, '23; at what particular time I do not recollect; he was then sick with the intermittent fever; he was unfit for duty at that time, and for some time after the fever was broken. It was in the city of New York, at the house of his father-in-law, Mr. Van Wyck.

Ques. Was not Lieut. Weaver's something of an inveterate case; such as would probably be contracted in southern climates?

Ans. The conclusion I arrived at, from his statements to me at the time, was, that it had been an obstinate and inveterate case, inasmuch as it had been on him for several months. I administered arsenic, which is not an unusual remedy in this country.

Doctor Ball, a witness, produced, and sworn, on the part of the accused, testified as follows:

Ques. Did you attend Lieut. Weaver as a physician; at what time, and where, during the summer of 1822? State the nature of his illness, and whether it rendered him unfit for duty.

Ans. I attended him at Mr. Codwin's, at Brooklyn, some time in the Summer of 1822; I think the month of August, shortly after his return from South America; he had the intermittent fever, was extremely weak, and for some time unfit for duty.

Ques. Was not Lieut. Weaver's something of an inveterate case; such as would probably be contracted in a southern country?

Ans. It was. It was one of the obstinate southern intermittents; cannot recollect how long I attended him; it was some considerable time.

Captain Cogshill, a witness, produced, and sworn, on the part of the accused, testifies as follows:

Ques. Were you not the Captain of the Sea Serpent? Did you know Lieut. Weaver at Lima, and did he then express an anxiety for the arrival of the Franklin, and his wish to join her? State the time you saw him, and when he left that place.

A. I arrived at Lima, I think, in March 1822; Lieut. Weaver expressed, as we all did, an anxiety that the Franklin should arrive. Lieut. Weaver was there when I arrived; I was Captain of the Sea Serpent. I am not positive as to his expressing a wish to join the

Franklin; heard him express a wish for her arrival. I left Lima about the last of July. I think he must have left there in May or June.

Ques. Did he state on his departure that he expected to return; and when?

Ans. I understood him to say, previous to his departure, that he expected to return. I understood him as soon as he could go home to the United States, and return conveniently.

Ques. Did you reside in the same house at Lima with Lieutenant Weaver?

Ans. No I did not room with him; dined with him frequently, and saw him almost daily.

James G. Weaver, a witness, produced, and sworn, on behalf of the accused, testified as follows:

Ques. Are you the brother of Lieut. Weaver? Do you know of his illness during the summer and fall of 1822? State what you know concerning it, where, and when.

Ans. I am the brother of Lieut. Weaver. I know he was very ill in the fall of 1822, up the North river, at Tellus Point, a place he owns.

William Lawton, a Lieutenant in the Navy of the United States, a witness, produced, and sworn, on behalf of the accused, testified as follows:

Ques. How long have you known Lieut. Weaver, and what is his character as an officer and a gentleman?

Ans. I have known him since 1816, and he has always sustained the character of an officer and a gentleman; I served in the Mediterranean in the same squadron, but not on board the same ship with him.

Francis H. Gregory, a Lieut. in the Navy of the United States, a witness, produced, and sworn, on behalf of the accused, testified as follows:

Ques. How long have you known Lieut. Weaver, and what is his character as an officer and a gentleman?

Ans. I have known Mr. Weaver about six or eight years, and have always viewed him as one of the most honorable young men in the service; that has been his general character. I have been intimate with him as a friend, and have never heard any thing against him, except in relation to the charges now against him, and of these nothing except common report.

John H. Aulick, a Lieut. in the Navy of the United States, a witness, produced, and sworn, on behalf of the accused, testified as follows:

Ques. How long have you known Lieut. Weaver, and what is his character as an officer and a gentleman?

Ans. I have known Mr. Weaversince 1816. My opinion of him has always been that he was a correct officer, and a gentleman, and a man of honor; never heard any thing against him, except the subject of the present charge.

Mervin P. Mix, a Lieut. in the Navy of the United States, a witness, produced, and sworn, on behalf of the accused, testified as follows:

Ques. How long have you known Lieut. Weaver, and what is his character as an officer and a gentleman?

Ans. I have known him about five years; his character as an officer and a gentleman, so far as I have had an opportunity of knowing it, has been correct.

Thomas Chew, a Purser in the Navy of the United States, a witness, produced, and sworn, on behalf of the accused, testified as follows:

Ques. How long have you known Lieut. Weaver, and what is his character as a gentleman and an officer?

Ans. I believe I first became acquainted with Lieut. Weaver at the fitting out of the Chesapeake, I think in 1813. His character then as a young man, and a young officer, was very high; he had been in service but a short time. I have known him ever since, and have known him to maintain the same standing.

Ques. Was not Lieut. Weaver dangerously wounded in repelling boarders on board the Chesapeake?

Ans. He was dangerously wounded, and, as I understand, in repelling boarders. My station, as Purser, being below at the time, I could know that fact only by report.

The accused also offered to the Court a letter dated Lima, May 9th, 1822, addressed by himself to Commodore Stewart, which was read and annexed, marked No. 10.

Also, a letter from the 4th Auditor's office, Treasury Department, signed T. Watkins, addressed to Lieut. W. A. Weaver, dated 8th Nov. 1824: read, and annexed, marked No. 11.

Also a letter from the 4th Auditor's office, dated Treasury Department, 1st October, 1824, addressed to Lieut. W. A. Weaver: read, and annexed, marked No. 12.

Also a letter dated Treasury Department, 4th Auditor's Office, 19th Oct. 1824, addressed to Lieut. W. A. Weaver, New York: read, and annexed, marked No. 13.

The accused stated to the Court that some other witnesses, whose presence he deemed necessary, were not now in attendance, but that he expected to be able to procure them by the morning;

Whereupon, adjourned until half past nine to-morrow morning.

THURSDAY MORNING, *November 18th.*

The Court met, pursuant to adjournment of yesterday.

The Judge Advocate submitted to the Court the letter annexed, marked C, from Captain Bainbridge, the President of the Court; whereupon the Court directed the Judge Advocate to inform Com. Bainbridge that the Court would adjourn from day to day until Saturday morning.

Whereupon the Court adjourned till to-morrow morning at 10 o'clock.

FRIDAY, *November 19th.*

The Court met, pursuant to adjournment of yesterday, and adjourned till to-morrow morning at 10 o'clock.

SATURDAY, *November 20th.*

The Court met, pursuant to the adjournment of yesterday. The Judge Advocate read to the Court a warrant from the Hon. the Secretary of the Navy, bearing date the 17th day of November, directed to the Court, annexed to the record, and marked D.

Captain Lewis Warrington appeared; but the Court having been organized, and having proceeded to the trial of the case of Lieut. Weaver, he could not take his seat as a member.

Beekman V. Hoffman, a Master Commandant in the Navy of the United States, a witness produced, sworn, and examined, on behalf of the accused, testified as follows:

Ques. Do you know Lieut. Weaver? how long? under what circumstances? what is his character as an officer and a gentleman? and was Lieut. Weaver's conduct meritorious or otherwise while under your command?

Ans. I have known Lieut. Weaver since the latter part of the year 1815. He sailed under my command in part of the year 1815, in 1816, and part of the year 1817; during part of this time he was my first Lieutenant, and his conduct was honorable and gentlemanly.

The accused then offered in evidence, and the Judge Advocate read to the Court, a copy of a letter, dated New York, Nov. 4, 1824, from Lieut. Weaver to the Secretary of the Navy, annexed and marked No. 15; an answer thereto, dated Nov. 16, 1824, annexed and marked No. 16. Letter from Lieut. Weaver to Com. Stewart, dated Callao, May 5, 1822, in answer to a question proposed to Com. Stewart, which was read, and the Court cleared to determine whether the same should be received in evidence. After a short time, the court was opened, and the Judge Advocate informed the accused that the Court had decided to receive the letter in evidence: it was annexed to the record and marked No. 17. Certified copies of the correspondence with the 4th Auditor annexed, and marked No. 18.

Captain Charles Stewart again.

Ques. Had you any verbal communication with Lieutenant Weaver in relation to his going to the Pacific in a private vessel? if any such communication passed, state, if you please, to what length of time the application for leave of absence extended, and for what period it was granted?

The accused objected to the question, on the ground that the application and permission being in writing the construction should be settled by the papers themselves.

Ques. by the Court. Whether any verbal orders were given to Lieutenant Weaver subsequent to the written one, annulling or in any degree varying it?

Ans. None that I know of; there was a conversation between myself and Lieutenant Weaver at Valparaiso, in which I advised him to hurry down to Lima, for that I expected the Constitution every day,

when I should soon follow, and he could join me; this was I think in February, 1822.

Ques. How long before or after the Franklin did the America sail from New York?

Ans. The America sailed I think two or three days before the Franklin.

Ques. When the order was given allowing Lieutenant Weaver to proceed in the America was it supposed the Franklin would sail first?

Ans. Yes. I was about to report her ready at the time; on examining, however, the state of the crew and equipment, I found some of the crew unfit to go on the cruise, and the necessity of filling up the number, and the delay in receiving the instructions after she was reported, produced the detention.

Ques. By the Court. Were the public stores which were put on board the America, placed under charge of Lieutenant Weaver especially, or of the master of said vessel?

Ans. Under that of Lieutenant Weaver.

Ques. Were the stores placed on board the America previous to your granting the permission to Lieutenant Weaver, or after?

Ans. They were placed on board after. I did not know there would be deficiency of room on board the Franklin until the Purser reported the fact to me.

The accused stated to the Court, that he had no other testimony at present to lay before the Court. The Court was cleared, and after some time was opened, and the Judge Advocate informed the accused, that the evidence on the part of the prosecution was closed, and the Court wished to know, whether the accused had any desire to submit any further evidence to them. He stated that he had no more witnesses to produce, but wished to submit to the Court the answer from the President to the interrogatories, forwarded to him some few days since. Whereupon the Court informed him that as the communication might reasonably be expected before Tuesday, they would be prepared to receive his defence on Tuesday morning, at ten o'clock, with which he expressed his satisfaction.

The Court then adjourned to meet on Monday next, at 10 o'clock, at the Marine Barracks, at the Navy Yard, at Brooklyn.

MONDAY, November 22, 1824.

The Court met at the Marine Barracks, at the Navy Yard, in Brooklyn, pursuant to the adjournment of Saturday.

Captain Lewis Warrington appeared and stated to the Court, that he had arrived in New York on Thursday, but understanding no business was to be transacted in the Court, he did not appear in Court until Saturday morning.

Captain Warrington also submitted to the Court his orders from the Department, which, at his request, were read, and a copy thereof annexed to the record, and marked (F.)

The Court then adjourned to meet to-morrow morning, at half past 9 o'clock.

TUESDAY, *November 23, 1824.*

The Court met, pursuant to adjournment of yesterday.

Captain Charles Stewart appeared in Court, and submitted the annexed paper marked G; whereupon, Lieut. Weaver and his counsel stated, that the letter therein referred to did not, in their opinion, contain any intimation that Commodore Stewart had any connexion in the subject matter of the letter; that he had in fact no such connexion; and the Court, as well as Commodore Stewart, being satisfied, the Judge Advocate was requested to enter the same on the record.

The Judge Advocate then read to the Court the annexed document from the Secretary of the Navy, and the interrogatories directed to the President, therein referred to, which were annexed to the record, and marked (H.) and (I.)

The defence of the accused was then read to the Court by his counsel, David B. Ogden, Esq. and annexed to the record, and marked (K.)

The Court was then cleared, the proceedings read over, and, after due deliberation, the Court decided that the first specification of the charge is fully proved; that the second specification is also fully proved. In regard to the third specification, the Court is of opinion that it is proved that Lieut. Weaver did make the representation, and for the purpose set forth in the specification; but that the representation so made, that Commodore Stewart was a particular friend of said Weaver, and desirous of aiding him, is proved to have been authorized by Commodore Stewart; that, so far as he represented that Commodore Stewart would give particular protection to a ship and cargo in which he, the said Lieut. Weaver, might be interested, to the port of Lima; and so far as he represented that Commodore Stewart, for greater protection, would appoint a place of rendezvous at St. Juan Fernandez, or elsewhere, such representations were without any authority of Commodore Stewart.

In regard to the fourth specification, the Court is of opinion that Lieut. Weaver was absent from the Franklin, by the permission of the commander, Commodore Stewart, during that part of the period embraced within the specification which extends to the arrival of the Franklin at Lima, in August, 1822, and that so far the specification is not proved; but that it is proved that, during the residue of said period, that he was absent from the Franklin without any lawful or proper excuse for his absence.

In respect to the fifth specification, the Court is of opinion that the facts contained in the specification are proved; but they are likewise of opinion, that Lieut. Weaver claimed his pay and rations as Lieutenant of the Franklin, in consequence of his being borne on the books of that ship, and it does not appear to the Court that he had any fraudulent design; and, therefore, they are of opinion, that the charge is not supported by this specification.

The Court do, therefore, adjudge that Lieut. William A. Weaver is **GUILTY** of the charge, and do sentence him to be **CASHIERED**.

WM. BAINBRIDGE,

JA. JONES,

J. D. HENLEY,

J. D. ELLIOTT,

GEO. C. READ.

RICHARD S. COXE, *Judge Advocate*.

The Court then adjourned to meet to-morrow morning, at half past 9 o'clock.

WASHINGTON, 27th Nov. 1824.

The sentence of the Court is approved.

JAMES MONROE.

K.

Mr. President and Gentlemen composing the Court:

That officers of the Army and Navy charged with offences against their duty, should be tried not by the ordinary courts of the country, but by courts martial specially organized for the purpose, is a provision not only essential to the public service, but to the safety and honor of the officers themselves. It is the boast of our citizens that every man must be tried by his peers, and suffer me to boast that every officer in the navy must be tried by his brother officers. To whom can I look for the defence of my honor, the protection of my innocence, the preservation of my hitherto unspotted name, with so much confidence as to my brother officers?

Gentlemen, I have seen some service; I have shed some blood in discharge of my public duty. I have never before been charged with any act calculated to tarnish the lustre of that navy to which it is my pride to belong; but I now stand before you an accused man, and, upon your oaths and your honor, you are to decide whether I am guilty or innocent of the charges brought against me. To say that I do not feel apprehensions as to the result of this trial, would belie my feelings: who but must feel apprehensions, when his honor, his reputation, and his standing in the service, are at stake? who can feel indifferent to the result of a trial upon a charge founded upon conduct, which has already elsewhere been declared to be corrupt? Gentlemen, although I have been solicitous for this trial, and have asked for it, I will not conceal that I am full of apprehensions as to the result. My honor, my future prospects, the happiness of my family, are in your hands.

What is the charge against me? Fraudulent and unofficer-like conduct, in making the agreement of the 24th of August, 1821, with Whitney, Tibbets, and Hoyt, which is set forth at length in the first specification, "thereby agreeing, for my individual profit, to employ

my official character and situation for deception and fraudulent purposes. and agreeing to the employment of the public armed vessels of the United States, in objects of private emolument;" these are the words of the specification. If, in order to be guilty of fraud, the heart must be tainted, if an act done with pure and upright intentions cannot be stigmatized as fraudulent, then I hope to satisfy this honorable Court that I am innocent of the charge of *fraud* so broadly made against me in this specification. If I had considered this agreement either as fraudulent or unofficer-like, I certainly should have been the last man to have exposed it before the public. And yet the public never would have heard of it, had I not made it the subject of the bill in Chancery, which has been produced and read as evidence against me by the Judge Advocate, and which, I filed in order to compel the persons, with whom the agreement was made, to perform their part of it; if my counsel, Mr. Emmet and Mr. Van Wyck, by whom the bill was drawn and signed, had believed the agreement to have been fraudulent and unofficer-like, they never would have advised me to file the bill, and thus proclaim my own infamy. If, therefore, there be fraud in this agreement, if there be in it any thing of which I ought to be ashamed as an officer; it is evident that I was unconscious of it; and it escaped the detection of my counsel upon that occasion; it never was discovered by the piercing eyes of those who chose to make the charge of fraud against me, a cover of their own injustice, a means of enabling them to escape from the performance of a solemn agreement. For, permit me to remind this honorable Court, that, afraid to meet the investigation of my claims, under this agreement, the men with whom it was made, most honorably placed themselves entirely upon this charge of the illegality of their contract with me, in order to avoid its performance—a contract drawn by themselves, with recitals inserted by themselves, and now those of my recitals, made a reason why they ought not to perform it. I repeat it, I was innocent of any intent to commit a fraud; my intentions were pure and honorable—my conduct throughout, proves them to have been so. Can it be possible that this Court will fix upon my conduct the charge of fraud, because it has been made by such men, and because supported by the opinion of a technical lawyer? But I hope I shall be pardoned in asking the Court to examine this agreement a little more minutely. What are its terms? It recites that it had been represented by me, to the parties of the second part, that Commodore Stewart was about to proceed to Lima in the Franklin, and that he was my particular friend, and was desirous of aiding me, and would give particular protection to a vessel and cargo in which I might be interested, to Lima, and would, for greater security, appoint a place of rendezvous at Juan Fernandez, or elsewhere. Now was this recital true?

Commodore Stewart has been examined. He states that he was a friend of mine, that I had served under him in a confidential capacity, and he was desirous of serving me; that he was about to proceed to the Pacific in the Franklin, and that he said he would give every aid,

advice, and protection to a ship in which I might be interested, not *incompatible* with his instructions from the Government. That he should probably stop at Rio Janeiro, on his way out, but entirely at Juan Fernandez, to put his ship in order. In the facts set forth in this recital, then, I think I am substantially supported by the testimony of Commodore Stewart. In stating those facts, there is, I apprehend, nothing dishonorable either to myself or the Commodore; to myself, it can be no dishonor to have obtained the confidence and friendship of a superior officer, with whom I had served in the most confidential situation, and it can reflect no dishonor upon the Commodore, that he was disposed to serve me, and in a particular manner, extend to me that aid, advice, and protection, which it was his duty to extend to every citizen of the United States. When was this agreement drawn and signed? A night or two, Mr. Whitney has testified, before the ship sailed. The *America* sailed from New York on the 4th of October, 1821. Now Commodore Stewart tells us, that, before this time, he had seen one of the parties, he thinks Mr. Tibbits, the ship's husband, and had substantially stated to him every fact contained in this recital; when, therefore, this agreement was drawn, Mr. Tibbits knew the truth of these representations, which the agreement recited, had been made to him by me. So far then, I trust, there is no fraud or deception to be attributed to me. But the agreement states that I was to put on board the said ship, a quantity of stores belonging to the *Franklin*, on which a freight is to be paid to the owners, and to go myself in the ship, and, for greater security, to represent her as a store ship, bound to the Pacific Ocean with stores for the navy of the United States, and myself, as an officer of the navy, in charge of such stores. And in this clause of the agreement, if any where, is to be found the deceptive and fraudulent purpose mentioned in the first specification, and the agreement for the employment of the public armed vessels of the United States in objects of private emolument. I am not accustomed to draw special agreements, nor, from the habits of my profession, well skilled in criticising the terms in which they are expressed. If I had been, I probably never should have executed the agreement in the form in which it now appears. Having, at that time, entire confidence in the integrity and honor of the gentlemen with whom I was acting, I believed that they would not ask me to sign any thing that was improper, and having then, and still great confidence, skill, and acuteness, as men of business, I signed the agreement without as much consideration as perhaps I ought to have given it. Although drawn and executed in October, it bears date in August; it makes me stipulate to put on board stores which had already been shipped: why it was so drawn, I do not know, unless the honorable gentleman who drew it, supposed it might have some bearing upon the defence, which at that early day, he formed the design of most honorably making to the legality of the contract, and to my right, therefore, to compel him and his associates to perform it. The shipment of stores for the *Franklin*, on board the *America*, it has been abundantly proved, was made by order of the Commissioners of

the navy, and of Commodore Stewart. That I was an officer of the navy in charge of those stores, is proved by Commodore Stewart's letter to me: bearing date on the 4th October, 1821, which has been read in evidence, and is before the Court; which letter contains the following clause, "as you are about to embark in the ship *America* for a port in the Pacific, you will be pleased to take special charge of the stores embarked in that ship for the navy service of the United States, and belonging to the ship *Franklin* under my command." Thus, then, I have shown that the stores for the use of the navy of the United States, were shipped on board the *America* by order of the competent authority, and that to me, an officer of the navy, was given the charge of such stores: in this there certainly was no criminality; but I bound myself to represent her as a store-ship, for her greater security in case of need. If the stipulation, on my part, had been to represent her as a ship with stores for the navy, there would have been no deception in it, but because I undertook to represent her a store-ship, bound to the Pacific with stores for the use of the navy, it is said that the stipulation was inserted for a fraudulent and deceptive purpose. I never did mean to enter into any stipulation, by which I bound myself to make any representations contrary to the truth of the facts, and if I am convicted upon this part of the specification, it must be because I have inadvertently not attended to the critical distinction between a store-ship and a ship with stores. I deny, most explicitly, ever intending to make an agreement for the employment of the public armed vessels of the United States in objects of private emolument, but I confess that, with the assent of Commodore Stewart, I represented that he would aid me with the same advice and assistance in prosecuting a lawful commerce, which it was his duty to give to every citizen of the United States and no more: and that this was a lawful use and employment of a public armed ship of the United States, can hardly be doubted. Why was the *Franklin* sent to the Pacific? I most solemnly deny ever having done or said any thing calculated to impair the character of Commodore Stewart. Whether I have made, in this agreement, representations which I was unauthorized by him to make, is confidently submitted by me, to the decision of the members of this Court upon the evidence before them.

The observations I have made are all I think it necessary to trouble the Court with; upon the three first specifications, I am not conscious of having acted fraudulently and in an unofficer-like manner, either in making the representations upon which the said agreement was founded, in making the agreement itself; and least of all am I conscious of any attempt to impair the character of Commodore Stewart, or of having said or written any thing calculated to do so. The fourth specification is in the following words:

"In absenting himself from his situation on board the said ship, the *Franklin*, during the entire period of her cruise to the Pacific Ocean, from the month of September, 1821, to the arrival of the said ship in New York, in the month of August 1824, without any lawful or proper excuse for such absence, and being engaged during the said period in attending to his private affairs."

I deny that I was absent from the Franklin without leave and without a lawful excuse; whether I was so, or not, is the question which this Court must decide. Having applied to Commodore Stewart for leave of absence from the ship Franklin, I received from him in answer to that application, the following letter, which is in evidence, and in possession of the Court, bearing date on board the Franklin, New York, Sept. 5, 1821.

“SIR: Agreeable to your request of the first instant, you are hereby permitted to remain in New York, and to proceed to the Pacific to rejoin the Franklin there by the earliest opportunity which may suit your convenience. I remain, respectfully, &c. &c.”

The time to which this leave of absence was to extend, the Court must perceive, was left by Commodore Stewart indefinite. I was to join the Franklin in the Pacific, not by the earliest opportunity, but by the earliest opportunity which might suit my convenience; and I was necessarily the only judge of my own convenience; the order, I contend, left it discretionary with me when to join the ship.

Before I sailed from New York, in the America, for the Pacific, Commodore Stewart knew of my intention to proceed to that place with the America; and that my object in doing so, was my agreement with Messrs. Whitney, Tibbets, and Hoyt. The evidence upon this subject has already been referred to in the observations which I have made upon the former specifications, and will not now be repeated. Commodore Stewart caused naval stores to be shipped on board of the America; of which stores, I have already shewn, he put me in charge. In his letter giving me that charge, he says, “You will be pleased to take special charge of the stores embarked in that [ship] for the navy service of the United States, and belonging to the ship Franklin under my command; when arrived at your port of discharge, you will cause them to be stored and preserved until the arrival of this ship.” From all these facts, it is evident, Commodore Stewart knew that my object in asking leave of absence was not as the letter giving the leave would seem to imply, to remain in New York; he knew it was for the purpose of endeavoring to employ myself in some transactions which might prove personally advantageous; hence, his assurance of his aid, advice, and protection, which had before been spoken of. If he had intended me to remain at my port of discharge, in care of the public stores, would he not, ought he not, to have expressed it in the orders by which I was given charge of the stores? Ought he not to have said in that letter—“on your arrival at your port of discharge, you will cause them to be stored, and remain with them until the arrival of this ship?” If Commodore [Stewart] intended that this leave of absence, which he had, by its very terms, left indefinite, depending upon my convenience, should no longer be so, but should terminate upon my arrival in the Pacific, had I not a right to suppose he would have made it so, by this last or some other order? Commodore Stewart has testified that “he saw me on board the Franklin off Valparaiso, and advised me to hurry down to Lima, as he expected the Constellation, and he should soon follow, and that I could

then join the ship." Nothing like the intimation of an order, either for me to remain in charge of the stores at Lima, or to join the ship there, but merely that I *could* join her there: that is, if it suited my convenience. According to the terms of my leave of absence, I could have an opportunity of doing so at Lima, upon the arrival of the Franklin at that place. I submit to the members of this Court, whether an order is implied in these words, that I *could* then join the ship; if the Commodore intended to make it an order, ought he not to have said, "on your arrival at Lima, you will," or "you must" "consider your leave of absence as at an end, and remain there in charge of the stores until the arrival of the Franklin?"

In pursuance of his advice, received off Valparaiso early in February, 1822, I proceeded in the *America* to Lima, where I arrived on the 25th of the same month, I caused, as I was ordered, the stores which were under my charge to be landed and stored; to be preserved until the arrival of the Franklin. I most anxiously waited her arrival until the middle of May, but never having heard a word from the Commodore, and believing, as on my honor I did, that my term of absence was limited only to my convenience, I determined to return to the United States, and to engage in a commercial speculation, which promised me great advantage: in the firm belief that I should be able to return to the Pacific, and rejoin the Franklin in from 7 to 9 months; that I was anxiously awaiting at Lima for the arrival of the Franklin, I refer the Court to the testimony of Captain Coggershall; to show that I then put the same construction upon my leave of absence that I do now, I refer the Court to the contents of my letter of the 5th May, 1822, dated at Callao, to Commodore Stewart. In that I say, "For the last month I have been most anxiously awaiting the arrival of the Franklin at this port. In a letter dated the 29th March, which was intended to be transmitted to you in Valparaiso, and detained here in consequence of having heard of the Constellation reaching that place, I mentioned a contract I could obtain, for a supply of Havana Tobacco, on the most advantage terms. Yet, at that date, I determined to await your approbation before I proceeded to close the affair. I have postponed the business so long as I could avoid coming to a conclusion, in the hope and earnest expectation of seeing you. Disappointed, from day to day, and from week to week, on a reference to my permission to rejoin you, I find I am permitted to do so by the earliest opportunity [it] may suit my convenience. The opportunity you will be good enough to allow me to defer till I again return here, which I contract to do in from seven to nine months. I would not stir from this, even with the immense expectations before me, if I did not think *you* would justify me by the latitude given in my permission, dated New York."

Shortly after writing that letter, I left Callao for Panama, whence I crossed the Isthmus of Darien, with a view of reaching New York in as short a time as possible. I was, however, unfortunately seized with a fever of the climate, in consequence of which, my arrival at New York was much retarded, and I did

not arrive here until the 19th day of August. I have, I trust, given such evidence to the Court of the state of my health, during that fall and the ensuing winter, to prove that I was not in a fit state to perform the voyage to the Pacific, or my duty, if I had been on board of the Franklin. I was disappointed in my commercial views, and I then became extremely anxious to return to my duty on board the Franklin. In the spring of 1823, it was understood that the frigate United States, was to be fitted out without delay, and to proceed to the Pacific, under the command of Captain Hull, and as I supposed it probable she would sail as soon as any merchant vessel, and as I took it for granted that a passage in her would not be refused to me, I determined to avail myself of the opportunity which she would afford, to return to the Pacific and resume my station in the Franklin; and before the United States sailed, I made a personal application to the honorable the Secretary of the Navy, for leave to proceed in that ship. The Secretary refused my application; saying, among other things, that the vessels would pass each other on their passage. This is the plain unvarnished tale of my transactions after I left Lima, and of the reasons why I did not return to the Pacific; whether my sickness, and the subsequent want of opportunity, be or be not a lawful excuse I submit to the candid decision of the members of this court. I ought, perhaps, here to stop with my observations upon this specification, but my own justification seems to me not only to justify, but to require me to say something upon some of the evidence which has been adduced in relation to my absence from the Franklin; in what I shall say upon the subject of this evidence, I hope I may not be understood as wishing to call in question the propriety of any man's conduct; but, being arraigned before a Court of officers, I am confident I shall be pardoned for speaking with the plainness and frankness becoming an officer, who is compelled to defend himself against a public prosecution. The muster book of the Franklin has been produced as evidence against me; now I deny, in the first place, that any entry in that book made without my knowledge or approbation, can or ought to be evidence against me. My leave of absence is in writing, it has been produced and it must speak for itself. To suffer any entry made in a book by a third person, either with or without order, to vary or modify that written leave of absence would be manifestly a violation of the first principles of justice. If it were permitted, no man could be safe in possessing any written order, for its force and effect might be altered at pleasure, by entries made in books without his knowledge.

But when was this entry made? After the charges were exhibited against me, after I was arrested, after this court was ordered, and on the day after this trial commenced, the entry was made after the commencement of this trial, and then produced in evidence to convict me. This entry was made too by the order of Commodore Stewart, to be used against a man who had served with him for years, who had been employed by him in most confidential business, which had been performed to his perfect satisfaction, and a man whom he felt great

disposition to serve. I shall dismiss this entry, without another remark, to the minds of the honorable members of this court. There is, however, some other evidence, in relation to the books of the Franklin, kept by the Purser, which I feel myself compelled to remark upon. Mr. Fitzgerald, the Purser of the Franklin, has testified that my name was kept on his books, as entitled to pay, during the whole cruise of that ship; he also testifies, that the muster rolls and pay rolls had been approved up to the 31st December, 1823. Thus, then, it is proved that the Commodore approved of my name being returned, as belonging to the Franklin, and entitled to full pay and rations, down to the last of December, 1823, when he now orders me to be entered as having been absent, without leave, from the 1st August, 1822. As I was not actually on board the Franklin, doing duty, it is manifest that I could not be entitled to continue on the muster roll of that ship, and entitled to full pay and rations, unless I had been absent, on leave. Commodore Stewart must have so considered me absent, or he could not have approved of the Purser's return to the Navy Department. If Commodore Stewart did consider me absent, upon leave, then, it is evident, that he gave the same construction to my leave of absence that I did; and it is, therefore, the more extraordinary that he should have directed the entry which I have before mentioned, and which was made on the day after this trial commenced.

Mr. Fitzgerald further testifies, that, on the first return made to the Department, I am marked, "on leave of absence, to join the ship in the Pacific;" that on one return I am marked, "in charge of the stores at Callao." This last entry was made by order of the Commodore, and after he knew that I had returned to the United States, and was *not* at Callao, in charge of any stores. Now, where is the proof of my being ordered to remain at Callao, in charge of stores? I have never received such an order. If such an order had been given to me, as soon as the Commodore found I had, in violation of it, absented myself from that place, without leave, *then*, with all due deference, it seems to me, I should have been marked as absent, "without leave," and not on the day after the commencement of this trial; *then*, it seems to me I should have been marked absent, without leave, and not returned to the Government as being at Callao, in charge of the public stores, when it was known that I had returned to the United States, and was not, therefore, at Callao. To return to this specification: if I have been absent from the Franklin, without leave, it has been because I unfortunately gave a wrong construction to my written leave of absence. I ask the court if the construction I gave it was a forced one? If not, am I, for this misunderstanding, to be convicted of the charge which is made against me, and punished by the sentence of this court? if my absence was prolonged more than it ought to have been, I trust, I have shown, it was not without lawful excuse—sickness certainly forms such an excuse.

The fifth, and last, specification, is in the following words: "In claiming of the Government of the United States full pay and rations

for the whole period of the cruise of the Franklin, as one of the Lieutenants of said ship, whereas the said William A. Weaver, during the said time, was engaged in his own private business, and performed no duty on board the Franklin, or in any other public service." Upon this specification, which involves in it the charge of a design, on my part, to defraud the Government of the United States, I feel at a loss how to express my answer. It is a charge implicating my honor and integrity; but it is made officially, by high authority, and it becomes me to meet the accusation, and, if possible, refute it. This is one of the specifications in support of the general charge of fraudulent and unofficer-like conduct; and is, indeed, in itself, a serious charge of fraud. I consider the uniform usage of the service to be, that an officer, absent upon leave, is entitled to full pay and rations. Whether I am right in this opinion, or not, is a question which the members of this court are much more competent to decide than I am, being much better acquainted with the rules of the service. If, then, I was absent upon leave, I was entitled to my full pay and rations, and had a right to charge them against the Government. If my leave of absence had expired, and after that expiration I must be considered as absent, without leave, still, if I honestly believed that my leave of absence continued, though I may have been mistaken in that belief, am I guilty of fraud? I am certainly as free from the charge of fraud, as any individual can be, who makes a charge, which he believes correct, against the Government, which turns out not to be so. Again: in what does this fraud upon the Government consist? Not in claiming my full pay and rations as a Lieutenant in the Navy; because, being an officer with that rank, I am entitled to full pay and rations, as long as I hold my commission, whether I am attached to any ship or not, except in case of furlough, which is not pretended to be my case. The fraud then, if any, consists, not in my asking more pay and rations than I am, by law, entitled to; but it must consist in my representing myself as attached to the Franklin, or as having done duty on board that ship, when I was not so attached, and when I performed no such duty: now, upon that subject, it was not in my power to deceive the Government, because the books at Washington would show whether I was attached to the Franklin or not; and because, whether I had done duty on board that ship or not, must appear from the returns made by the Purser of the ship, to the proper officer at Washington. The specification is not in claiming full pay and rations as a Lieutenant of the Navy, during the whole cruise of the Franklin, but in claiming the full pay and rations, as one of the Lieutenants of that ship, during the whole period of her cruise. I repeat it, no act of mine could deceive the Government upon this point. The returns of the ship are what they would look to, and not to any declarations of mine upon the subject. With the making those returns, I had no concern, as must already be very evident to the court. If, by the returns at Washington, it appears that I am entitled to my full pay and rations, as a Lieutenant belonging to that ship, that is, manifestly, no fraud of mine. If, by those returns, I do not appear

entitled to my pay and rations, then, no charge of mine could deceive or defraud the Government. I forbear to make any further particular observations upon the specifications and evidence in this case—I forbear to speak of the importance of your decision, to myself, my family, and my friends; I feel that my honor, my good name, and my future prospects in life, are in your hands; but, I also feel and know, they are in the hands of gentlemen, who can properly estimate their value: I am in the hands of men of honor, of officers of the American Navy, and to them, therefore, I commit myself, confident that they will do their duty, without favor, and without fear. I am conscious of never having intended to do any thing inconsistent with my duty as an officer—any thing that was calculated to injure the character of the service. If, in the opinion of this court, I have unconsciously erred, and must be punished for that error, I hope I shall meet my fate as a man ought to do. Gentlemen I have done.

WILLIAM A. WEAVER.

No. 1.

Articles of agreement made this twenty-fourth day of August, one thousand eight hundred and twenty one, between Stephen Whitney, Hoyt & Tom, and Elisha Tibbets, owners of the ship America, of the first part, and Lieut. William A. Weaver, of the Navy, of the second part, Witnesseth:

That whereas it has been represented by the party of the second part, to the parties of the first part, that Commodore Stewart, in the Franklin 74, is now about to proceed in said ship to the port of Lima, in the Pacific Ocean, and that Commodore Stewart, being a particular friend of the party of the second part, and desirous of aiding him, would give particular protection to a ship and cargo in which he might be interested to said port of Lima, and, for greater security would appoint a place of rendezvous at St. Juan Fernandez, or elsewhere: Now, therefore, for and in consideration of the said protection, so as aforesaid to be given by Commodore Stewart, in the Franklin, and the services of Lieut. Weaver, it is agreed as follows: First, The parties of the first part agree to load their ship the America with flour and salted provisions, and to put her under the command of Capt. Henry L. Dekoven, with orders to sail and proceed, without delay, to the port of Lima, touching at such place as may be fixed on (say St. Juan Fernandez) for rendezvous with the Franklin, and thence, under her protection and direction, to Lima. It is also understood and agreed that Lieut. Weaver is to put on board said ship a quantity of stores belonging to the Franklin, on which a freight is to be paid to the concern, and to go himself in the ship: and, for her greater security, is to represent her as a store-ship, bound to the Pacific Ocean, with stores for the navy of the United States, and himself, as an officer of the navy, in charge of said stores. In considera-

tion of all which services and protection, so to be afforded, it is agreed that the said Capt. H. L. Dekoven shall pay to the said party of the second part, at Lima or other near port, one fifth part of the nett profits of the voyage out, after deducting the cost and charges of the cargo, including insurance and interest of money, and fourteen thousand six hundred dollars freight of the same. It is also agreed that Lieut. Weaver may put a private adventure on board, of not exceeding one ton outward, and the same amount home in the ship, should she return to the United States direct. It is further understood, that Lieut. Weaver and Com. Stewart are to afford to Capt. Dekoven every facility and protection in their power in leaving Lima, whenever the ship may be ready to sail. Second, It is further agreed that, if it shall be found impracticable or not prudent, in the opinion of Capt. Dekoven, to enter the port of Lima, it is understood and agreed that the ship may go to some neighboring port either in Peru or Chili.

ELISHA TIBBETS,
WILLIAM A. WEAVER,
STEPHEN WHITNEY,
HOYT & TOM.

Witness,

HENRY L. DEKOVEN.

NAVY DEPARTMENT,

11th December, 1824.

I hereby certify the annexed to be a true copy of the original.

CHAS. HAY, *Chief Clerk.*

No. 2.

IN CHANCERY.

To the Honorable Nathan Sanford, Esq. Chancellor of the state of New York:

Humbly complaining, sheweth unto your honor, your orator William A. Weaver, of the city of New York, gentleman, a Lieutenant in the Navy of the United States, that some time in the month of August, in the year of our Lord one thousand eight hundred and twenty one, the following agreement was made between your orator, and a certain Stephen Whitney, of the city of New York, merchant, a certain Goold Hoyt, of the said city, merchant, and who carries on business under the name of Hoyt and Tom, and uses that subscription, and a certain Elisha Tibbets, of the same place, merchant, viz. Articles of agreement made this twenty-fourth of August, one thousand eight hundred and twenty-one, between Stephen Whitney, Hoyt and Tom, and Elisha Tibbets, owners of the ship America, of the first

part, and William A. Weaver of the Navy, of the second part, witnesseth, That whereas it has been represented by the party of the second part to the parties of the first part, that Commodore Stewart in the Franklin 74, is now about to proceed in said ship to the port of Lima, in the Pacific Ocean, and that Commodore Stewart being the particular friend of the party of the second part, and desirous of aiding him, would give particular protection to a ship and cargo in which he might be interested, to said port of Lima, and for greater security, would appoint a place of rendezvous at St. Juan Fernandez or elsewhere: Now, therefore, for and in consideration of the said protection, so as aforesaid to be given, by Commodore Stewart in the Franklin, and the services of Lieutenant Weaver, it is agreed as follows: First, the parties of the first part agree to load their ship the America, with flour and salted provisions, and to put her under the command of Captain Henry L. Dekoven with orders to sail and proceed without delay to the port of Lima, touching at such place as may be fixed on (say St. Juan Fernandez) for rendezvous with the Franklin, and thence, under her protection and direction, to Lima; it is also understood and agreed, that Lieutenant Weaver is to put on board said ship a quantity of stores belonging to the Franklin, on which a freight is to be paid to the concern, and to go himself in the ship, and for her greater security is to represent her as a store ship bound to the Pacific Ocean with stores for the Navy of the United States, and himself as an officer of the Navy in charge of such stores. In consideration of all which services, and protection so to be afforded, it is agreed that the said Captain H. L. Dekoven, shall pay to the said party of the second part, at Lima or other near port, one-fifth part of the nett profits of the voyage out, after deducting the costs and changes of the cargo, including insurance and interest of money, and fourteen thousand six hundred dollars freight of the same; it is also agreed that Lieut. Weaver may put a private adventure on board of, not exceeding one ton outward and the same amount home in the ship, should she return to the United States direct. It is further understood that Lieutenant Weaver and Commodore Stewart are to afford to Captain Dekoven every facility and protection in their power, in leaving Lima, whenever the ship may be ready to sail. Second. It is further agreed, that, if it shall be found impracticable or not prudent, in the opinion of Capt. Dekoven, to enter the port of Lima, it is understood and agreed, that, the ship may go to some neighboring port either in Peru or Chili; which agreement was duly signed by the parties, respectively, with their proper names, except the said Gould Hoyt, who signed the same by subscribing as his signature "Hoyt & Tom," and the said agreement was witnessed by Henry L. Dekoven, the Captain Dekoven in the said agreement mentioned. And your orator further shews, unto your honor, that in order to the more perfect and specific understanding of what charges and expenses were to be considered as being included in the said sum of fourteen thousand six hundred dollars, stated in the said agreement to be allowed for freight, an estimate of the expenses was made by the said Elisha Tibbets,

Stephen Whitney, and Goold Hoyt, with the knowledge and approbation of said Henry L. Dekoven, and furnished to your orator; that the said estimate of expenses was in the hand writing of the said Elisha Tibbets, or of some one of them, the said Stephen Whitney, Goold Hoyt, or Henry L. Dekoven, and the original, as your orator believes, and therefore charges, is now in the possession of said Henry L. Dekoven, or in the said Stephen Whitney, Elisha Tibbets, Goold Hoyt or some one of them; that the following is a true copy of the said estimate, as your orator believes, and therefore charges, viz.

ESTIMATE OF EXPENSES.

Outfit at New York, estimate 7,500, half is	-	-	-	\$3,750
6 months' wages of crew 350 per month	-	-	-	2,100
Ship valued at 16,000 6 mo.				
$\frac{1}{2}$ outfits 3,750 19,750 interest $3\frac{1}{2}$ per cent	-	-	-	691 25
Insurance on ditto to cover per $7\frac{1}{2}$	-	-	-	1,620
Wear and tear of ship, sails and rigging	-	-	-	2,500
Port charges, landing cargo, &c.	-	-	-	4,000
				<hr/>
				\$14,661 25

Casualties of the voyage at risk of the owners; which estimate being furnished by the owners of the said ship America, mentioned in the said recited agreement, and your orator then believing the same to be made out in good faith, he assented to the same, as the basis for inserting in the said agreement, the said sum of fourteen thousand six hundred dollars as a charge under the name of freight; but which was expressly understood to contain all the charges contained in said estimate. And your orator further shews unto your honor, that, after the making the said agreement, the said ship America, mentioned therein, and of which the said Whitney, Tibbets, and Hoyt, were the owners, was fitted out for the voyage to Lima contemplated in the said agreement; that your orator placed himself on board said vessel, and rendered his services pursuant to the said agreement; that the said ship was laden in the port of New York, the greater part, but not wholly with flour and salted provisions; that your orator has a paper purporting to be an invoice of the cargo of the said ship, in the hand writing of the said Elisha Tibbets, and signed by him, and furnished by him to your orator, as a true invoice of the cargo of the said ship America, a copy of which, marked A, is annexed to this your orator's bill of complaint, and which he prays may be taken as part of the same; and your orator further states, and expressly charges, that the said invoice, so furnished by the said Elisha Tibbets, does not contain a just and true statement of the cargo of the said vessel, and of the prices which were paid for the said cargo, nor of the premium which was paid for the insurance upon the said cargo, but that the same have been overcharged intentionally, on the part of the said Elisha Tibbets, in order to lessen the amount of your orator's pro-

portion of the nett profits. And your orator further states and charges, that the flour was purchased at a less price than that charged in the invoice, and that the excess charged in the said invoice in the price of the flour laden on board the said vessel, is, as your orator believes, several thousand dollars; that the premium paid for insurance, did not, in fact, exceed six per cent., and that it is charged in the said invoice at seven and an half per cent., and that insurance was not, in fact, made upon the sum of twenty eight thousand and eleven dollars and eleven cents, as charged in the said invoice, but upon a sum several thousand dollars less, as your orator is informed, and therefore shews, and hopes to be able to prove. And your orator further states, that the kegs of white lead, mentioned in the said invoice, were laden on board the said vessel with the consent and approbation of your orator, in order to bring the vessel to a better sailing trim. And your orator further states, and expressly charges, that a great quantity of other goods, and of great value, were laden on board of the said vessel by the owners of the said vessel, or some of them, but without the knowledge, consent, or approbation of your orator, and in fraud of his just rights, and his agreement aforesaid: and that the said vessel was capable of taking at least five hundred barrels more of flour and provisions, according to the stipulations of the said agreement, than she actually did take, but that the room in the said vessel was taken up with other goods, belonging, as your orator is informed, and believes, to the respective owners of the said vessel, or to their friends, greatly to the prejudice of your orator, and in violation of the said agreement made with your orator as aforesaid; and your orator expressly charges that the said Stephen Whitney had several large packages of goods on board the said vessel, which were sold at a very great profit, and the nett proceeds of which amounted to a very large sum, none of which has ever been allowed or accounted for to your orator; and your orator further shews unto your honor, that, about the time of making the said agreement, it was communicated to your orator by some or all of the parties of the first part to the said agreement, that the said Henry L. Dekoven was to share in the profits of the said voyage, and was to have one-fifth thereof; and your orator charges that the said Henry L. Dekoven was, and is, entitled to one-fifth of the proceeds of the said voyage; and, also, that the said Henry L. Dekoven was interested with the owners of the vessel in the subsequent voyage from Lima to Canton, or home; and that, in consequence thereof, it became the interest of said Henry L. Dekoven, and of the said Stephen Whitney, Elisha Tibbets, and Gould Hoyt, to make the amount of the nett proceeds of the voyage from New York to Lima appear as low as possible. And your orator further states, that, on or about the fourth day of October, in the year one thousand eight hundred and twenty-one, the said vessel proceeded on the voyage aforesaid to Lima; that nothing material occurred until within a few degrees of the latitude of Rio de Janeiro, where the vessel being leaky, she put into that port, and part of the cargo was

restowed; that at Rio de Janeiro a certain John Hefferman, of New York, shipped on board the said vessel, under the superintendence of the said Captain Dekoven, certain goods, valued per invoice at four hundred and ninety-six dollars and fifty-eight cents, to be sold for joint account of the said John Hefferman and the said ship America. The said goods were afterwards sold at Lima, and the nett proceeds amounted to one thousand seven hundred and forty-eight dollars and fifty-five cents, one half of which was due to the said John Hefferman, and the other half to those concerned in the ship America, as appears by the account of sales of the said goods furnished to your orator by the said Henry L. Dekoven, and a copy of which, marked B, is annexed to this Bill of Complaint, and which your orator prays may be taken as part of his bill. And your orator further states, that no part of the profits or nett proceeds of the goods so put on board by the said John Hefferman, has been paid to your orator, nor has any thing been allowed therefor to him by the said owners, or the said Captain Dekoven. And your orator further states, that the said vessel arrived safely with her cargo at the port of Callao, near Lima, on or about the — day of February, in the year one thousand eight hundred and twenty-two. And your orator further states, that Callao is the sea port at which the vessels that are said to go to Lima unlade their cargoes, from whence it is transported over land to Lima, a distance of about eight miles. That a few days after he arrived, Captain Dekoven (to whom the cargo was consigned) sold 1200 barrels of flour, deliverable at the city of Lima, at thirty-five dollars per barrel; and your orator charges, that, if this sale had been carried into effect by the said captain, he would have been obliged to pay eight dollars and fifty cents per barrel duty on landing it, and one dollar and fifty cents per barrel expense of transportation to Lima, which expenses of port charges, of transportation to Lima, and landing cargo, were calculated and allowed for in the said estimate of expenses, and provided for in the sum of fourteen thousand six hundred dollars contained in the said agreement, as is above in this bill mentioned and set forth. That the said Captain Dekoven, to the prejudice of the interest of your orator, rescinded the said sale, and sold the whole cargo, including the said twelve hundred barrels previously contracted for at twenty-four dollars per barrel, deliverable on board, whereby the said Captain Dekoven avoided the payment of duties and charges of transportation from Callao to Lima, and did not, in fact, ever deliver the said cargo, or any part thereof, at Lima, and thereby avoided a disbursement of the whole sum of four thousand dollars, stated in the said estimate of expenses, which was contemplated to be covered in the agreement aforesaid, by the said sum of fourteen thousand six hundred dollars; and your orator further states, that no allowance whatever has been made to your orator by the said Captain Dekoven, acting as the agent of the owners, or by the owners themselves, in consequence of not delivering the said cargo at Lima, and avoiding the heavy disbursement as aforesaid, amounting to at least the said sum of four thousand dollars, upon the amount of flour de-

livered; and your orator charges that, if the said flour had been sold and delivered at Lima for thirty-five dollars per barrel, as it might have been, that being the market price of flour at Lima at that time, the charge of transportation would have been borne by the owners, and no part of it would have been chargeable to, or borne by your orator, inasmuch as, by the said agreement, that charge had been amply provided for, and allowed to the owners as hereinbefore set forth. And the result would have made the nett proceeds two dollars and fifty cents more per barrel on the whole cargo, than has been allowed to your orator, by the said Capt. De Koven, and the owners of the said vessel. And your orator is advised, that, according to the true intent and meaning of the said agreement, he is entitled to claim an allowance in consequence of the said cargo not having been transported to Lima, and delivered there at the expense of the said owners, and in consequence of the avoiding, and never having incurred the disbursement of four thousand dollars, or any part thereof, for which they had been allowed in the sum of fourteen thousand six hundred dollars, charged under the title of freight, in the said agreement. And your orator further shows, that, after the sales of the cargo, and after the voyage from New York to Lima had terminated, your orator demanded payment of one-fifth of the nett proceeds, according to the conditions of the said agreement; that the said Captain Dekoven then exhibited to your orator an account, made out by him, purporting to be an account of the ship America's cargo, sales, costs, &c. (a true copy of which account, marked C, is annexed to this bill of complaint, and which your orator prays may be taken as a part of the same.) That, by the said account, there appears a charge, stated in the said account, to be thirty-five days' interest on twenty-five thousand twenty-six dollars and five cents, from the fifteenth of March to the twentieth of April, one hundred and seventy dollars and thirty-one cents, and charged against the nett proceeds of said vessel, which your orator is advised is improper and unjust; inasmuch, as, by the previous agreement of the parties concerned, six months' interest was all that was to be allowed or charged; and it appears by the invoice that the charge of interest for six months had been already made on the part of the owners; and as your orator expressly charges the truth to be, no agreement was ever made by him for any further allowance of interest; and that the writing at the foot of the invoice, viz: "If we are in funds before six months, interest to be deducted, if not in that time, interest to be added," makes no part of the contract or agreement between your orator and the said owners; and that such writing, or direction, respecting interest, was an addition made, as your orator believes, by the said Elisha Tibbets, without the approbation or assent of your orator, and that it is not binding on him.

And your orator further shows unto your honor, that, in the said account of the ship America's cargo, sales, and costs, &c., made out by the said Captain De Koven as aforesaid, there appears another charge or item as follows, viz: Expenses of shipping, duties, and

commission, five per cent., and other charges amounting to \$171 16 on each box containing \$3000, and is \$2,424 35, deduct the proportion for discount on paper to pay duties 70.67, \$2343, which sum of two thousand three hundred and forty-three dollars is deducted in the said account from the nett profits of the said voyage from New York to Lima, thereby reducing and lessening your orator's proportion of the said nett profits. And your orator further states, that the said amount of two thousand three hundred and forty-three dollars ought not to have been so deducted, inasmuch as the charges composing it relate to the homeward voyage of the said ship America from Lima, being charges paid on account of the export duties and other charges, on certain boxes of silver received on board the said vessel at Lima, and that your orator's agreement does not extend to such a transaction, or render him liable to pay any part of those charges, your orator having no interest whatever in the said silver, or in the subsequent voyage of the said vessel from Lima as aforesaid to Canton, or any other place, but your orator's concern in the said vessel having terminated on the arrival of the said vessel at Lima aforesaid, and on the discharge and sale of her cargo. And your orator further shows that the said Henry L. Dekoven would not settle with, or pay, your orator when at Lima, any other proportion of the nett profits than one-fifth according to the said account so exhibited by him, the said Henry L. Dekoven; and your orator was compelled to receive on account at that time, such sum as the said Henry L. Dekoven chose to allow him; that your orator has received on account of the said nett profits only the sum of twelve thousand three hundred and sixty-six dollars and six cents, whereas your orator is advised, and believes he ought to receive, a much larger sum. And your orator further states unto your honor, that, in addition to the said flour and salted provisions, a great quantity of valuable merchandise was laden and conveyed in the said vessel from New York to Lima aforesaid, belonging, as your orator is informed, and believes, principally to the said Stephen Whitney, and a part to other persons, which merchandise was put on board without your orator's consent or approbation; and your orator charges, that, if the same was intended to be a private adventure, it was a fraud upon your orator; that the said Captain Dekoven sold out of the said vessel at Lima aforesaid, considerable invoices of dry goods to a large amount, but to what amount in particular is not known to your orator, but which he, the said Dekoven, told your orator he was commissioned to sell on account of the said Stephen Whitney, and which goods your orator charges to be a part of the goods put on board at New York as aforesaid; that he the said Captain Dekoven, sold out of the said vessel at Lima aforesaid, a large quantity of other goods, for and on account of the said Gould Hoyt, as the said Dekoven informed your orator, and which your orator also as aforesaid, charges to have been put on board at New York; that the said Captain Dekoven also sold out of the said vessel a large amount of bread stuffs, cordage, old sails, &c. of all which the said Captain Dekoven refused to render any account to your orator. That your

orator further charges, that the said Capt. Dekoven took on board at New York other goods, for, and on account of, persons unknown to your orator, and without your orator's knowledge and consent, which goods were transported to Lima aforesaid, and sold by the said Captain Dekoven at a great profit, but for the nett profits of which, neither the said Dekoven or the said Whitney, Tibbets, and Hoyt, have ever accounted to your orator. And your orator further charges, that if the said vessel had been laden according to agreement with your orator, she would have carried out five hundred barrels more. That the said Captain Dekoven has so confessed to your orator, that the said vessel had five hundred barrels less on board than he had once before laden in the said vessel, at the mouth of the Mississippi. And your orator further states, that neither the said Henry L. Dekoven, acting as the agent for the said Whitney, Tibbets, and Hoyt, nor the said Whitney, Tibbets, and Hoyt, have in any manner accounted with your orator, or allowed him any thing for his proportion of the nett profits on the sales aforesaid, of the goods shipped on board the said ship America, by the said John Hefferman, nor for his proportion of the nett profits on the goods laden on board the said vessel at New York, and sold by said Captain Dekoven on account of the said Stephen Whitney, nor of the goods sold on account of the said Goold Hoyt, nor for the nett profits of the sales of the said bread stuff, cordage, old sails, &c., nor for the nett profits of any other goods sold from on board the said vessel, excepting only what is contained as aforesaid, in the said account exhibited by the said Captain Dekoven.

That your orator charges that, according to the true intent and meaning of the said agreement between him and the said Whitney, Hoyt, and Tibbets, your orator is entitled to one-fifth of the nett proceeds on all the sales aforesaid, that is to say, on all goods and merchandises whatever laden on board the said vessel at New York aforesaid, or at any time and place during the voyage, and carried to Lima, and sold there, or sold at any other place during the voyage; and also to one-fifth of the amount of the sales of bread stuffs, cordage, old sails, &c., inasmuch as your orator had been charged with one-fifth of the expenses and wear and tear, &c. of the said vessel, in and by the estimate of expenses and agreement as aforesaid. That the same, as your orator believes, will amount to a very large sum, and your orator therefore insists, that an account should be taken of the same, under the direction of the honorable Court; and that such proportion thereof should be allowed to your orator, as in equity and good conscience he is entitled to. And your orator well hoped that the said Stephen Whitney, Goold Hoyt, and Elisha Tibbets, and the said Henry L. Dekoven would have come to a fair and just account with your orator in the premises, and that they would have allowed and paid him his one-fifth of the nett proceeds of the said voyage, as in justice and equity they were bound to do, and as your orator has frequently, and in a friendly manner, requested them to do. But now so it is, may it please your honor, that the said Stephen Whitney, Elisha Tibbets, Goold Hoyt, and Henry L. Dekoven, combining and confederating with divers other persons, at present unknown to your orator,

whose names, when discovered, your orator prays may be herein inserted, with proper and apt words to charge them, and contriving here to injure and oppress your orator, in the premises, sometimes pretend that your orator has been paid all his fifth part of the nett proceeds of the said voyage, whereas your orator charges the contrary thereof to be the truth; and they at other times pretend that no other goods were laden on board the said vessel except flour and salted provisions, or that, if other goods were laden on board, your orator has no right to any of the nett profits arising on the sale of such goods, whereas your orator charges the contrary thereof to be the truth; and they sometimes pretend that they have expended and disbursed four thousand dollars in port charges, and landing cargo at Lima aforesaid, whereas your orator charges the contrary thereof to be the truth; and they sometimes pretend that no overcharge whatever was made in the estimate of the cargo, or in the rate of insurance in the invoice aforesaid, furnished by the said Elisha Tibbets, whereas your orator charges the contrary thereof to be the truth; all which actings and doings are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises. In tender consideration whereof, and forasmuch as your orator is remediless in the premises, at and by the direct and strict rules of the common law, and cannot have adequate relief, save in a court of equity, where matters of this and like nature are properly cognizable and relievable: to the end, therefore, that the said Stephen Whitney, Goold Hoyt, Elisha Tibbets, and Henry L. Dekoven, and the rest of the confederates, when discovered, may, upon their several and respective corporal oaths, full, true, direct, and perfect answer make, to all and singular, the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated, and they thereto distinctly interrogated; and that not only as to the best of their respective knowledge and remembrance, but also as to the best of their several and respective information, hearsay, and belief, and more especially that they may answer, and set forth, whether certain goods and merchandise were not laden on board of the said ship America, at New York, in addition to the flour and pork and white-lead, specified in the invoice (marked G) furnished by and signed by the said Elisha Tibbets; what were the respective amounts in quantity and value of the said goods and merchandises, on whose account shipped, and to whom consigned; whether such goods and merchandise were not sold at Lima aforesaid, or at what other place, and when; and that the said defendants may set forth the particulars of such sales, and the invoices of the costs of such goods, and also exhibit an account of the nett profits arising upon such sales; and that the said defendants may set forth and exhibit an account of the sales of the said bread stuffs, cordage, old sails, and other articles, sold from on board the said vessel at Lima aforesaid, and the amount which they produced; and to what accounts they have been credited, and who have shared in the profits of the same; and that they may set forth what other private adventures were taken on board the said vessel, from New York to Lima, aforesaid,

the amount of sales of such private adventure, and the original costs thereof, and that they may set forth and answer whether there was not such an estimate of the expenses of the said voyage made out and exhibited, as is set forth in the said bill of complaint, or some other, and what estimate, and by whom made and exhibited, and to whom, and for what purpose; and that they, or some of them, may produce the original of such estimate of expenses, and annex the same to the answer of the defendants; and that they may expressly answer whether the sums set forth and charged in the said estimate of expenses, did not constitute the basis for the charge of fourteen thousand six hundred dollars, inserted in the said agreement, under the head of freight. If not, then that the said defendants explain particularly, and set forth how, or in what manner, the said sum of fourteen thousand six hundred dollars was computed; and that the said defendants may come to a fair account with your orator touching the nett proceeds of the voyage aforesaid; and that an account may be taken, under the direction of this honorable court, of the cargo of the said vessel, and of all the goods and merchandise of whatever kind, or to whomsoever belonging, or under whatever pretence, laden on board at New York, aforesaid, or during her voyage from New York to Lima, aforesaid, and an account, also, of the amount actually insured, and of the premium actually paid for such insurance upon the said cargo of the said vessel; and that an account may also be taken of the port charges, and the expenses of landing cargo, &c. of the said vessel at Lima, aforesaid; and that an account may also be taken of the actual cost, and the prices actually paid for the flour and salted provisions, laden at New York, aforesaid, and mentioned in the said invoice of the said cargo; and that a full, true, and just account may be taken of the nett profits of the said voyage, estimated upon the facts, as they shall be ascertained under the direction of this honorable court; and that, if, upon such account it shall be found that your orator has not been paid his full one-fifth of the said nett profits, according to the true intent and meaning of said agreement, then that the said defendants may be compelled, by a decree of this honorable court, to pay whatever shall be found remaining due to your orator, and that your orator may have such further and other relief in the premises as to the court shall seem meet and proper, and as in equity and conscience he ought to have. May it please your honor to grant unto your orator the people's most gracious writ of subpoena, to be directed to the said Stephen Whitney, Gould Hoyt, Elisha Tibbets, and Henry L. Dekoven, thereby commanding them, and each of them, at a certain day, and under a certain pain, therein to be inserted, personally to be and appear before your honor, in this honorable court, then and there to answer the premises, and to stand to and abide such order and decree therein, as to your honor shall seem agreeable to equity and good conscience. And your orator will ever pray, &c.

P. C. VAN WYCK,

Sol'r for Complainant.

THO. ADDIS EMMET,

Of Counsel for Complainant.

A.

Invoice of the cargo of the ship America, Henry L. Dekoven, Master, bound for South America, and shipped by Elisha Tibbets, Stephen Whitney, and Hoyt & Tom, citizens of the United States of America, and consigned to the said Master, for sales and returns for account of the said shippers, as per agreement.

NEW YORK, 15th Sept. 1821.

4,248 whole barrels	}	superfine flour,	-	-	23,365	16
403 half do.						
100 barrels prime pork		-	-	-	862	50
O D, No. 1, 2, 3,		3 hhds. containing 215 kegs				
		white lead, 28 lbs. each,	739	07		
Less debenture	-	-	-	182	95	
					<u>556</u>	<u>12</u>
						24,783 78
		<i>Charges.</i>				
Cartage	-	-	-	123	37	
Cooperage	-	-	-	24	13	
Brokerage	-	-	-	94	77	
					<u>242</u>	<u>27</u>
						25,026 05
Add six months' interest	-	-	-		875	91
						<u>25,901 96</u>
Insurance to cover 7½ per ct.	-	-	-		2,100	15
						<u>\$28,011 11</u>

Errors excepted.

ELISHA TIBBETS.

If we are in funds before six months, interest to be deducted; if not in that time, interest to be added.

B.

Account of sales of bear skins and manna, sold at Lima, the amount of invoice cost at Rio de Janeiro \$496 50, and sold for joint account of John Hefferman and the ship America.

101 bear skins sold at \$16 each, $\frac{6}{107}$ allowed for small ones	-	-	-	1,616	00
3 boxes manna, nett 546 lbs. at 7½ rials	-	-	-	528	94
					2,144 94

Charges.

Commissions, 4 per ct. paid Sarratea	-	\$85 00	
Duties on valuation, at \$735 at 20 per cent.		147 00	
Carriage from Callao	-	13 00	
Disembarkation and guard on the mole	-	3 50	
Custom house, ware house rent, 1 rial each,	-	1 62	
Carriage from custom house to store	-	2 50	
Ware house rent,	-	1 63	
Freight 18 packages, at \$3 each,	-	39 00	
My commission, 5 per cent.	-	107 24	
		<hr/>	
		401 29	
Deduct discount on paper to pay duties		4 89	
		<hr/>	396 40
			<hr/>
Due to Mr. Hefferman	-	-	1,748 54
			874 27
			<hr/>
Remitted to Mr. Hefferman	-	828 70	
Premium on bill 5½ per cent.	-	45 57	
		<hr/>	
		874 27	

LIMA, May 9, 1822.

Errors excepted.

HENRY L. DEKOVEN.

C.

Account of the ship America's cargo, sales, costs, &c.

4,449½ bbls. flour, sold at \$24 per bbl. on board	106,788 00
100 do pork, 22 -	2,200 00
215 kegs white lead, 6,020 at \$18 34 per cwt.	1,128 75
	<hr/>
	110,116 75
Commission paid J. I. Sarratea, 4 per cent.	4,404 67
	<hr/>
	105,712 08
Freight of stores for U. S. ship Franklin	912 00
Primage 5 per cent.	45 60
	<hr/>
	957 60
	<hr/>
Nett sales,	\$106,669 68
	<hr/>
Invoice cost of cargo	28,011 11
Deduct overcharge in insurance	288 65
	<hr/>
	27,722 46

35 days' interest on 25,026 5, from 15th March to 20th

April - - - - -	170 31
Amount for expenses as per agreement, - - -	14,600 00

42,492 77

Expenses shipping duties and commissions 5
per cent. and other charges amounting to

\$171 16 on each box contg. \$3,000 \$2,424 35

Deduct the premium for discount on paper to
pay duties - - - - -

70 67

2,343 68

44,836 45

106,669 68

61,833 23

Nett profit divided by 5, leaves due Mr. Weaver

12,366 65

Cash received from Mr. Weaver

\$6,000 00

My receipt on account of Mr. Whitney

4,796 50

1,203 50

\$13,570 15

LIMA, May 9, 1822.

Errors excepted.

HENRY L. DEKOVEN.

State of New York, ss.

I certify that the foregoing is a true copy of the bill filed in my office in the case of William A. Weaver, complainant, and Stephen Whitney, Elisha Tibbets, Goold Hoyt, and Henry L. Dekoven, defendants.

JNO. L. LAWRENCE,

Assistant Register of C. of Chancery, S. of N. Y.

NEW YORK, April 13, 1824.

STATE OF NEW YORK, }
In Chancery. }

Stephen Whitney, Elisha Tibbets, Goold Hoyt, and Henry L. Dekoven, adv. William A. Weaver.

The joint and several demurrer of Stephen Whitney, Elisha Tibbets, Goold Hoyt, and Henry L. Dekoven, defendants, to the bill of complaint of William A. Weaver, complainant.

These defendants, by protestation, not confessing all or any of the matters and things in the said complainant's bill contained to be true, in such manner and form as the same are therein set forth and alleged, do demur to the said bill, and for cause of demurrer

shew, that the said complainant has not, in and by his said bill, made such a case as entitles him, in a court of equity, to any discovery from these defendants, respectively, or any of them, or any relief against them, or any of them, as to the said matters contained in the said bill, or any of such matters; and that any discovery which can be made by these defendants, or any of them, touching the matters complained of in the said bill, or any of such matters, cannot be of any avail to the said complainant, for any of the purposes for which a discovery is sought against these defendants by the said bill, nor entitle the said complainant to any relief in this court, touching any of the matters therein complained of. Wherefore, and for divers other good causes of demurrer appearing on the face of the said bill, these defendants do demur thereto, and they pray the judgment of this honorable Court, whether they shall be compelled to make any further or other answer to the said bill; and they humbly pray to be hence dismissed, with their reasonable costs in this behalf sustained.

D. CODURSE,

Solicitor for Defendants.

GEO. GRIFFIN,

Of Counsel for Defendants.

State of New York, ss.

I certify that the foregoing is a true copy of the demurrer filed in my office, in the case of Stephen Whitney, Elisha Tibbets, Goold Hoyt, and Henry L. Dekoven, defendants, at the suit of William A. Weaver, complainant.

JNO. L. LAWRENCE,

Asst. Reg. of the C. of Chancery, State of N. Y.

NEW YORK, April 13th, 1824.

Articles of agreement made between Stephen Whitney, Hoyt and Tom, and Elisha Tibbets, owner of the ship America, of the first part, and Captain Henry L. Dekoven, of the second part, *witnesseth:*

That, whereas the parties of the first part have made up a voyage for the said ship, with a cargo of flour and salted provisions, for the port of Lima, in the Pacific ocean, and entered into an agreement with Lieutenant William A. Weaver, of the Navy, to go in the ship: (a copy of which agreement is hereunto annexed,) Now, therefore, it is agreed, by and between the said owners and the said party, of the second part, as follows: First. The ship and cargo, being the property of the parties of the first part, is to be put under the command and control of the said party of the second part; and the ship, now valued at the sum of \$14,000, and the cargo, costing of \$25,026⁵/₁₀₀, to which is to be added, all expenses of outfits, wages, stores, provisions, insurance, and interest of money, and all other expenses of the voyage, and after deducting the proportion of profits of the outward voyage to be paid to Lieutenant Weaver, contemplated in the agreement with him, the said party of the second part, is to be entitled to one-fifth part of the nett profits of the whole voyage, out and home,

for his services, as Master and Supercargo. It being distinctly understood, that the said party of the second part, is not to charge any commission, wages, or perquisites, of any kind, whatsoever. And, in order to ascertain and determine the amount of nett profits, the ship, on her return, is to be sold at auction, if we cannot agree upon a valuation; and the difference between such sale and her present valuation, with interest, is to be chargeable against the voyage, before profits divided. Second. It is further understood and agreed, that, in case it shall be found that the port of Lima cannot be entered, or that it is inexpedient to go there, Captain Dekoven is at liberty to exercise his discretion, and to go to any other place, or places, either in the Pacific, or India, or elsewhere. And, that, if he can find employment for the ship, after selling her outward cargo, he is at liberty to do so; and, also, such part of the funds, as he may think proper, may be employed in any trade he may deem expedient, or, at his option, to put the whole, or any part of the funds, on board any of the ships of war of the United States, bound home, or for safe keeping; or, if he thinks proper, may ship the specie funds to England, in any English ship of war, going home, consigned to Thomas Wilson & Co., London; or, if he deem it expedient, may sell the ship: and this shall be his sufficient authority for so doing. Third. That there may be no misunderstanding, it is distinctly hereby declared, that the whole capital, ship, cargo, and outfits, are the property of the parties of the first part, and is at their risk; and that, in case of loss, the said party of the second part, is not to be liable therefor, except so far forth as a want of proper attention, and a due regard to the interest of the concern may, or ought to, make him so liable. And further, that all earnings of the ship, whether in the transport of specie, passengers, or freight and primage of any kind, whatsoever, is to be for the common benefit, as hereinbefore set forth; and that no private adventure or profit is in any way, directly or indirectly, to be taken or allowed by the said party of the second part. Fourth. It is further agreed, that, if, on the final termination of the voyage, at New York, as aforesaid, it shall appear that the nett earnings of the ship shall not be so much as that the one-fifth nett profits will not be equivalent to fifty dollars per month, for the term which Captain Dekoven may be employed on board said ship, then, and in that case, Captain Dekoven shall be entitled to receive fifty dollars per month, monthly wages, for the time he may be employed on board said ship: *Provided*, the whole nett earnings of the ship shall be sufficient for that purpose. But, it is distinctly understood, that no wages is to be allowed, unless the nett earnings shall be sufficient to pay it.

ELISHA TIBBETS,
HOYT & TOM,
STEPHEN WHITNEY,
HENRY L. DEKOVEN.

Witness, WILLIAM A. WEAVER.

NAVY DEPARTMENT, 11th December, 1824.

I certify the above to be a true copy from the original.

CHAS. HAY, Chief Clerk.

No. 18—No. 1.

TREASURY DEPARTMENT,

Fourth Auditor's Office, 29th June, 1821.

SIR: The balance of \$151.62, reported on the 8th February, 1821, due from you to the United States, the Purser in the Franklin will be instructed to debit to you on his books, unless you shall advise me of any claim you may have as an offset, and transmit the vouchers for settlement.

I am, sir, respectfully, your obedient servant,

CONST. FREEMAN.

Lieut. WILLIAM A. WEAVER, *New York.*

No. 2.

U. S. SHIP FRANKLIN,

New York, July 2d, 1821.

SIR: I have the honor to acknowledge the reception of your letter of the 29th June, and, in reply thereto, state, that seventy dollars, or thereabouts, you will be correct in having debited to me; but I have a claim that I could not have adjusted when last in Washington, on account of the deficiency of a voucher that was to be obtained from Acting Purser Dudley Walker, who was then, and is now, in the Mediterranean. It is for the recruiting of twenty seamen, and ordinary seamen, while I commanded the Brig Spark; the receipt of the Purser was necessary, and in error I presented the recruiting articles. Mr. Walker will, I pledge myself, give the proper voucher, if you mention the circumstance to him when settling his accounts.

I am, sir, &c. &c. &c.

W. A. WEAVER.

CONSTANT FREEMAN, Esq. *Auditor.*

The recruiting articles I left in your office, with Mr. Macdaniel.

No. 3.

U. S. SHIP FRANKLIN,

August 8th, 1821.

SIR: From the 17th April to the first day of August, the U. S. ship Franklin has been undergoing repairs at the Navy Yard, New York. There was, during that time, no accommodation for commissioned officers living on board, three other officers were similarly situated

with myself, and were compelled to live on shore, will the allowance of house rent, fire wood and candles be allowed to us? or what consideration will be made for our extra expense? \$20 per month, under such circumstances. I would consider a just compensation; and if it will be allowed, request you will pass it to my credit. If any voucher is required, Capt. Evans will certify the fact.

I have the honor to be, &c. &c. &c.

WILLIAM A. WEAVER.

CONSTANT FREEMAN, Esq.

Fourth Auditor.

No. 4.

TREASURY DEPARTMENT,

Fourth Auditor's Office, 15th Aug. 1821.

SIR: I have received your letter of the 2d ult. and 8th instant; your claim for recruiting 20 seamen in the Mediterranean, for the Brig Spark, has been submitted to the Secretary of the Navy for his authority to pass it to your credit, which he has refused, as he has of all other similar claims recently presented. Your claim for chamber money cannot be allowed, until you shall transmit to this office a certificate from your commanding officer, stating that the period for which you charge the Franklin was undergoing repairs, and not in a situation to accommodate you on board, and that in consequence thereof, you have been obliged to lodge on shore.

I am, sir, &c. &c.

CONSTANT FREEMAN.

Lieut. W. A. WEAVER.

No. 5.

U. S. SHIP FRANKLIN,

New York, Aug. 29, 1821.

SIR: Enclosed I transmit the voucher required by your letter of the 15th inst. to entitle me to chamber money for extra expenses, while fitting out the Franklin; I expect to be allowed \$20 per month. You are aware the whole duty of the outfit of that ship fell upon me, and that it was not until she was at her moorings in the North river, that the honorable Secretary thought proper to supersede me in rank. You informed me "that you had submitted my claim to the Secretary of the Navy, for the recruiting of 20 seamen in the Mediterranean for the Brig Spark, in order to pass it to my

credit, which he has refused, as he has done of all similar claims *recently* presented." In reply, I have to state, that last winter I was distinctly told, in your office, that the Purser's receipt (a voucher you now hold) would be sufficient for passing to my credit four dollars for each man so recruited. So far the faith of the Department is committed. If the Secretary of the Navy has made a recent determination not to admit such claims, there is no justice in extending it to my case, of nearly two year's standing, and after I had been informed it would be passed to my credit on the production of the necessary voucher. If this determination of the Secretary had been made two years since, its operation would have been very different. If, within the period since I performed the duty, one individual has been credited for a similar duty, I must insist on the admission of my claim, and you, yourself, must acknowledge its justice.

I remain, &c. &c. &c.

WILLIAM A. WEAVER.

CONSTANT FREEMAN, Esq.

P. S. Mr. Thompson could hardly intend to deprive my wife and child of the monthly stipend the Purser has been instructed to deduct from my pay.

W. A. W.

No. 6.

TREASURY DEPARTMENT,

Fourth Auditor's Office, 3d Sep. 1821.

SIR: I have received your letter of the 29th ult. with the certificate therein enclosed, on which, agreeably to the regulations of the Secretary of the Navy, addressed to me on the 17th of last January, you can only be allowed at the rate of \$2 per week. Your account will then stand thus:

To balance on last settlement, - - - - -	\$151.62
Overpayment by Dudley Walker, - - - - -	64.67
	<u>\$216.29</u>
By chamber money, 15 weeks, at \$2, - - - - -	30.00
Leaving a balance due the United States, - - - - -	<u>\$186.29</u>

With respect to your claim for recruiting men for the Spark, I have to observe, that, at the time you presented it at this office, I was under the impression that it would be allowed by the Secretary, on your procuring the Purser's certificate, as required by the recruiting regulations. He has, however, in exercising the power vested in him,

refused to allow the claim, and I have no control over his decisions or arrangements.

I am, sir, &c. &c. &c.

CONSTANT FREEMAN.

Lieut. WILLIAM A. WEAVER,

New York.

I certify that the foregoing, from No. 1 to 6, inclusively, are true copies from the originals, on record and file in this office.

TREASURY DEPARTMENT,

Fourth Auditor's Office, 8th Nov. 1824.

T. WATKINS.

No. 7.

U. S. SHIP FRANKLIN,

New York, Sept. 25, 1824.

SIR: On a settlement of my account at Washington, last November, there was a balance of about one hundred and fifty dollars in my favor. I was then requested to let it stand, to which I acceded, until the arrival of the Franklin. There is, likewise, a balance of pay due me on the books of the Franklin, which you will be pleased to transmit to me in New York.

I remain, respectfully, sir,

Your obedient servant,

WILLIAM A. WEAVER.

FOURTH AUDITOR, *Washington.*

I certify the above to be a true copy of the original on file in this office.

TREASURY DEPARTMENT,

Fourth Auditor's Office, 8th November, 1824.

T. WATKINS.

No. 8.

NEW YORK, Oct. 10, 1824.

SIR: I have the honor to transmit the statement required in your letter of the 1st instant.

To balance from pay roll No. 1, to 30th April, 1821,	\$40 52
This sum checked by order of the Fourth Auditor,	151 62

Allotment fo pay	-	-	-	-	-	360 00
Cash paid by Purser	-	-	-	-	-	897 88
						<hr/> \$1,450 02 <hr/>
By pay, from May 1st, 1821, to Dec. 31, 1823, thirty-						
two months at \$40	-	,	-	-	-	1,280 00
975 undrawn } rations, a 25 cents each						
1950 extra	-		-	-	-	731 25
						<hr/> \$2,011 25 <hr/>
Amount credit and hospital fund	-		-	-	-	1,456 42
						<hr/>
Balance	-					\$554 83 <hr/>

Messrs. Gillis or Macdaniel can explain to you correctly how the charge of \$151 62, has been exhibited to my credit.

I am, respectfully, Sir,

Your obedient servant,

WILLIAM A. WEAVER.

T. WATKINS, Esq. *Fourth Auditor.*

No. 9.

Extracts from the muster-roll of the United States' ship Franklin.

Muster-roll No. 1, signed by William B. Finch: 1820, July 1st, William A. Weaver, lieutenant.

Muster-roll No. 2, approved by Charles Stewart: 1821, May 1st, William A. Weaver, lieutenant, from muster-roll No. 1, discharged, 31st December, 1823, to muster-roll No. 3.

I certify the above are true extracts from the muster-rolls of the U. S. ship Franklin, numbered 1 and 2, on file in this office.

TREASURY DEPARTMENT,

Fourth Auditor's Office, 8th Nov. 1824.

T. WATKINS.

Muster-roll No. 3, approved by Charles Stewart: 1823, Jan. 1st. William A. Weaver, lieutenant, "discharged." Absent, without leave, from the 1st August, 1822.

No. 10.

LIMA, May 9, 1822.

MY DEAR SIR: Enclosed I have the honor to leave you a duplicate receipt from Mr. Sarratea, for the slop clothing, hospital stores, &c. belonging to the Franklin, under your command, and stored agreeable to your instructions, and left to your order. I have given the private store-houses of Mr. Sarratea the preference over those of the Government, having full confidence in his integrity, and of their better preservation than elsewhere. I take this opportunity of recommending that gentleman to your notice, having given us full satisfaction in the consignment of the America's cargo—a thing not very general among merchants here.

I have the honor to remain, &c. &c.

WILLIAM A. WEAVER.

Com. CHAS. STEWART.

No. 11.

TREASURY DEPARTMENT,

Fourth Auditor's Office, 8th November, 1824.

SIR: Pursuant to the request made in your letter of the 4th instant, I herewith transmit you copies of your letters addressed to me, under date of the 25th Sept. and 10th Oct. 1824, on the subject of your accounts. Also, copies of the correspondence between you and the late Fourth Auditor, in 1821. There is not on record in this office, any letters to Commodore Stewart, or any other person, directing moneys to be stopped from your pay; nor was there any statement made of your account on or about the 1st December, 1823, as you were not able to produce evidence that the Purser had stopped from your pay any moneys to your debit on the books of this office.

The balance to your debit at that time was	-	-	\$698 16
The amount of your claim for travelling expenses from			
Gibraltar to Madrid, under orders of Com. Stewart,			
in 1820, was	-	-	640 00

Leaving a balance to your debit of	-	-	\$58 16
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On the 4th inst. I adjusted your account, passing to your credit, by direction of the Secretary of the Navy, pay and rations from the 1st September to the 31st October, 1824; and also, the amount of your claim for travelling expenses in 1820, before mentioned; leaving to be settled with the Purser of the U. S. ship Franklin, the amount advanced to you on account of your pay, prior to the return of that

vessel to the United States. The following is a sketch of the account adjusted:

Lieut. William A. Weaver, by pay and rations from 1st Sept. to 31st Oct. 1824	-	-	-	-	\$125 75
Travelling expenses in 1820, from Gibraltar to Madrid, &c.	-	-	-	-	640 00
					<hr/> 765 75
To balance on settlement 12th Sept. 1822	-	\$698 16			
Hospital money, two months	-	-	-	40	
					<hr/> 698 56
Balance due W. A. Weaver, and remitted 6th Nov. 1824					<hr/> <hr/> \$67 19

I am, Sir, respectfully,
Your obedient servant,

T. WATKINS.

Lt. WILLIAM A. WEAVER,
U. S. Navy, New York.

No. 12.

Lieut. William A. Weaver, to the following sums charged by the Purser of the U. S. ship Franklin, on his pay-roll, No. 2, viz:

Balance from pay-roll No. 1, to 30th April, 1821	-	\$40 52
This sum checked by order of Fourth Auditor	-	151 62
Allotment of pay	-	360 00
Cash paid by Purser	-	897 88
		<hr/> \$1,450 02

TREASURY DEPARTMENT,

Fourth Auditor's Office, 1st October, 1824.

SIR: I have received your letter of the 25th ultimo, requesting a settlement of your account. As your pay has not been extended, or made up on the rolls of the Franklin, to any given period, it will become necessary that you should transmit a statement, debiting your pay and rations for the time you were actually attached to that vessel; crediting the above sums charged you by the Purser, together with the hospital money. On the receipt of such statement, your account shall be adjusted, and the balance found due to you remitted agreeable to your request.

I am, Sir, respectfully,
Your obedient servant,

T. WATKINS.

Lieut. WILLIAM A. WEAVER,
U. S. Navy, New York.

No. 4.

NAVY COMMISSIONERS' OFFICE,

24th September, 1821.

SIR: The Commissioners have, this day, written to Commodore Stewart, and have authorized him, agreeable to your suggestion, of 21st instant, to ship by the *America*, for Valparaiso, such part of the Franklin's slop clothing, as cannot be conveniently received on board the Franklin. They have, also, ordered a shipment of 400 harrels of pork to Valparaiso, by the *America*, from Baltimore, for the use of the Franklin, and other vessels, on that station.

I am, respectfully,

Your obedient servant.

JOHN RODGERS.

EDWARD FITZGERALD, Esq.

Purser U. S. Ship Franklin, New York.

NAVY COMMISSIONERS' OFFICE,

24th September, 1821.

SIR: Mr. Fitzgerald, Purser of the Franklin, has suggested to this Board, that the quantity of slop clothing, required for the Franklin, is so large, that room cannot conveniently be made for the stowing of it in hogsheads on board—that a few hogsheads might be shipped to Valparaiso, in the ship *America*, which vessel will sail from New York in a few days. The Commissioners concur in this proposition, if you should advise it; and you will consider yourself authorized to have such part of the slop clothing, as cannot be conveniently shipped on board the Franklin, shipped, accordingly, in the *America*.

The Commissioners intend shipping by the *America*, from Baltimore, 400 barrels pork, for the use of the Franklin, and other vessels, on the station to which you are proceeding. This pork will be delivered at Valparaiso.

I am, sir, very respectfully,

Your obedient servant,

JOHN RODGERS.

COMMODORE STEWART,

New York.

No. 5.

Postscript to a letter from Captain Charles Stewart, dated New York, July 8, 1821.

Lieut. Weaver is apprised that you intend ordering an officer, senior to himself, on board, and I presume if it should be desirable to him to be detached, you will be disposed to indulge him.

C. S.

NAVY DEPARTMENT,

October 26, 1824.

I certify that the above is a true copy from the original, on file in this Department.

CHAS. HAY.

No. 6.

NAVY DEPARTMENT,

23d July, 1821.

SIR: In answer to your letter, of the 19th instant, I have to state, that the urgent claims of many officers of your class, and senior to you, place it out of my power, having a due regard to what I conceive to be my duty, to comply with your request, to make you First Lieutenant of the Franklin.

I am, respectfully, &c.

SMITH THOMPSON.

Lieut. WILLIAM A. WEAVER,

U. S. Ship Franklin, New York.

NAVY DEPARTMENT,

October 26, 1824.

The foregoing is a true copy from the records of this Department.

CHAS. HAY.

Chief Clerk.

G.

A letter of Lieut. Weaver's to me, dated May 5th, contains a passage, relating to a certain tobacco contract, entered into by him at Lima, which might receive an erroneous construction, if not fully explained. I beg leave to submit to the honorable President and members of the Court whether it would not be best to propose to me

questions on that passage, as well as the periods on which I received the letters of Lieut. Weaver.

CHARLES STEWART.

D.

To the Court Martial now assembled on board the United States' Ship, Washington 74, at Brooklyn, New York, of which William Bainbridge, Esq. is President.

You are hereby authorized to adjourn the court to such place as you shall consider most proper, within the limits of the Navy Yard at Brooklyn, and to hold your sessions upon such adjournment.

Given under my hand, and the seal of the Navy Department, this seventeenth day of November, in the year of our Lord one thousand eight hundred and twenty-four.

SAM. L. SOUTHARD.

C.

NEW YORK, Thursday, 18th Nov. 1824.

SIR: In consequence of the death of my brother, Captain Joseph Bainbridge, of the Navy, who died this morning, at 6 o'clock, I have to request that the court will excuse my further attendance, on the trial before them; or, if that cannot consistently be done, that they will excuse my attending until Saturday next, at 10 o'clock, A. M.

I am, &c. &c.

WM. BAINBRIDGE, *President.*

TO RICHARD S. COXE, Esq.

Judge Advocate of the Court Martial

Sitting on board the U. S. S. Washington.

No. 3.

NEW YORK, September 1st, 1821.

SIR: Circumstances, of a personal nature, render it extremely desirable for me to remain a short time longer in New York, and to have permission to join the Franklin in the Pacific. I shall proceed

in the ship *America*, bound to a port in that sea; which will be the earliest opportunity from this place.

I have the honor to be, very respectfully,

Sir, your obedient servant,

WILLIAM A. WEAVER.

Com. CHARLES STEWART,

Present.

No. 3.

U. S. SHIP FRANKLIN, OFF N. YORK,

October 4th, 1821.

SIR: As you are about to embark in the ship *America*, for a port in the Pacific, you will be pleased to take special charge of the stores embarked in that ship, for the Navy Service of the United States, and belonging to the ship *Franklin*, under my command. When arrived at your port of discharge, you will cause them to be stored and preserved until the arrival of this ship. Wishing you a pleasant and prosperous voyage,

I remain, very respectfully, sir,

Your most obedient servant,

CHAS. STEWART.

Lieut. WILLIAM A. WEAVER,

U. S. Navy.

U. S. SHIP FRANKLIN, OFF N. YORK,

September 5th, 1821.

SIR: Agreeable to your request, of the 1st instant, you are hereby permitted to remain in New York, and to proceed to the Pacific, to rejoin the *Franklin* there, by the earliest opportunity which may suit your convenience.

Respectfully, sir,

Your obedient servant,

CHAS. STEWART.

Lieut. WILLIAM A. WEAVER,

New York.

No. 13.

TREASURY DEPARTMENT,

Fourth Auditor's Office, October 19, 1824.

SIR: I received your letter of the 10th inst., with a statement of your account to the 31st December, 1823, the settlement of which I

have been directed, by the Secretary of the Navy, to suspend, on the ground that you were not performing duty on board the Franklin for the time charged.

I am, sir, respectfully, &c. &c.

T. WATKINS.

Lieut. WILLIAM A. WEAVER,
U. S. Navy, New York.

No. 15.

NEW YORK, November 4, 1824.

SIR: As my prolonged absence from the Franklin 74 has been made a specification in the charge alleged against me. I have been directed by my counsel to request of you, you will be pleased to state, by letter, what your answer was to my verbal application on or about the first December, to rejoin the Franklin 74 in the Pacific, by the Frigate United States. Allow me to remind you, sir, that to my first proposition of rejoining her, as first lieutenant, founded upon the practice of the service, and recommendatory letters from Captains Stewart, and Evans, your reply was, "you would not alter the arrangements of your predecessor;" and to my second, of proceeding to sea to rejoin the Franklin, "that the two ships would certainly pass each other on the ocean, and that I had better await her arrival, and rejoin her here," or words to that effect. Mr. Ogden informs me, a letter from you on this subject will obviate the necessity of taking your testimony.

I remain, very respectfully, sir,

Your obedient servant,

WILLIAM A. WEAVER.

Hon. SAMUEL L. SOUTHARD,
Secretary Navy, Washington.

No. 16.

NAVY DEPARTMENT,

November 16, 1824.

SIR: Your letter of the 4th inst. has been received. My memory respecting the matters mentioned by you, is not very clear; but so far as it serves me, the following are the facts: You called at my office, a short time I believe before the Frigate United States sailed, mentioned that you were one of the Lieutenants attached to the Franklin, and requested orders of me to join her as her first Lieutenant; I was surprized at the request, and inquired how you hap-

pened to be here if attached to the Franklin. You then explained to me that you had been with Commodore Stewart in the Mediterranean, in some way as a confidential aid, or officer, perhaps Signal officer: that, on being ordered to the Pacific, he had requested that you might be his first Lieutenant, which was refused by the Secretary of the Navy, who assigned your age in the service, (and, perhaps, other reasons,) as an objection. That, upon this refusal, Commodore Stewart being friendly to you, and unwilling to mortify you, by having you in the vessel in an inferior capacity, gave you leave of absence, and you had not since been in her, but now wished to join her as first Lieutenant. I remember that your statement seemed to me to be extraordinary, but it might, on further inquiry, and information, appear perfectly proper that I should not alter the arrangements made by my predecessor, as to the first Lieutenant of the ship, nor interfere on the subject until much better informed; that I could only place you there by removing the then first Lieutenant, who was your senior, for which I saw no good reason; that no order was necessary from the Department to join a vessel, to which you had been attached by it, and from which you were absent by the leave of the commander; and that it was especially unnecessary to give any order, or for you to go out in the United States to join the Franklin, as the time of her crew had expired, and from information received from Commodore Stewart, it was altogether probable that he would leave Valparaiso before Commodore Hull arrived, and the vessels would pass each other on their passage. This, so far as I recollect, was the conversation that passed between us, at the time alluded to in your letter.

I am, very respectfully, sir,

Your obedient servant,

SAMUEL L. SOUTHARD.

Lieut. WILLIAM A. WEAVER,

U. S. Navy, New York.

No. 17.

CALLAO, May 5th, 1822.

MY DEAR SIR: For the last month I have been most anxiously awaiting the arrival of the Franklin at this port. In a letter dated the 29th of March, which was intended to be transmitted to you in Valparaiso, and detained here in consequence of having heard of the Constellation's reaching that place. I mentioned a contract I could obtain for a supply of Havanna tobacco, on the most advantageous terms. Yet, at that date, I determined to await your approbation before I proceeded to close the affair. I have postponed the business so long as I could avoid coming to a conclusion, in the hope and earnest expectation of seeing you, (disappointed from day to day, and

from week to week.) On a reference to my permission to rejoin you, I find I am permitted to do so by the "*earliest opportunity may suit my convenience.*" The opportunity you will be good enough to allow me to defer till I again return here, which I contract to do in from seven to nine months. I would not stir from this, even with the immense expectations before me, if I did not think *you* would justify me by the latitude given in my permission, dated at New York. I have contracted and given bond in \$30,000 to supply the Government of Lima with 200,000 lb. of Havanna tobacco, at \$1.25 the pound, and an equal quantity of Virginia, at 25 cents the pound, in the time I have specified above. The advantages of the contract are too apparent to attempt to display them. If I succeed, one half the advantages, which I retain to myself, will afford me an ample fortune. This very advantageous contract I could have signed and sealed one month ago, yet did not, so long as I could put it off, in the hope of seeing you. For my own funds I have taken bills on the owners of the *America*, at par, so that I fortunately realize in New York all that I have made by my voyage here. The slop-clothing, stores, &c. after keeping on board the *America* to this date, for their better security, I am about to land and place in the custody of Mr. Sarratea, the respectable merchant who did our business, and very much to our satisfaction. He has agreed to pay over to Captain Dekoven the freight due on those articles. The *America* proceeds to Canton; it was therefore desirable she should have all her funds on board. I expect to sail on Wednesday, the 8th of May, in a small vessel for Panama, which I have chartered in company with Mr. Eldridge, the gentleman to whom I referred in my former letter. We pay \$350 the month for the vessel, which is certainly not unreasonable. I think, with a tolerable share of fortune, I shall be in New York between the first and middle of July, when I shall make all possible despatch to return to Lima. I will advise Mr. M'Cauley of my return, in order that he may avail himself of the chance of communicating with you. In the utmost confidence I have laid before you, Commodore, my design, and hope you will not disapprove the step I have taken; in that hope I have the honor to remain, very respectfully, your obedient servant,

W. A. WEAVER.

Com. CHARLES STEWART,

Comm'dg U. S. squadron, Pacific Ocean.

H.

Lieut. Weaver's interrogatories to the President of the United States.

1st. Did not Lieut. William A. Weaver, soon after his return from the Pacific Ocean, call on you, sir, in Washington, say sometime in the fall of 1822? If yea, what appeared to be the object of that call?

2d. Did not Lieut. Weaver, in addition to the political information

given, state his intention of immediate return to the Pacific, to re-join Com. Stewart in the Franklin 74? If yea, please so to state, and whether Lieut. Weaver was not requested to inform the President of the United States when he should be about to sail, in order to charge him with letters, despatches, &c. for Com. Stewart?

3d. Did the President, at the time, express any disapprobation of the conduct or movements of Lieut. Weaver; or, rather, did he not suppose his naval and political information of sufficient importance to send for Commodore D. Porter, the only Navy Commissioner at that time supposed to be in Washington, but who was, on inquiry, found to be absent? If yea, please so to state.

4th. Did not Lieut. Weaver state, in the course of his conference, the absence from Washington of the Secretary of the Navy? That the communications that would have been otherwise made to the Secretary of the Navy, were made to him, the President of the United States, in consequence of that absence? If yea, please so to state.

5th. Did not Lieut. Weaver state that his return to the United States was under a temporary leave of absence from Com. Stewart, that looked to his return to the Franklin 74, in the Pacific? If yea, please so to state.

I.

NAVY DEPARTMENT,

20th November, 1824.

SIR: I am directed by the President of the United States to inform you that he has received your letter dated 16th November, 1824, containing certain interrogatories, which are herewith returned to you, a copy of them being retained. That he has read said interrogatories with attention, and gives the following answers:

1st. Inter. He does recollect that some officer of the Franklin called on him on his return to Washington from the Pacific, and had a conversation with him respecting political and other matters in that region, and he believes, but is not certain, that that officer was Lieut. Weaver; he does not recollect the time nor the particular object of the call so as to state either of them.

2nd Inter. He does not recollect that Lieut. Weaver stated his intention of immediate return to the Pacific to rejoin Com. Stewart in the Franklin, nor that Lieut. Weaver was requested to inform him when he should be about to sail, in order to charge him with letters, despatches, &c. for Com. Stewart. He has no recollection of a conversation on either point, though it is not improbable that it might have occurred; that such conversation, if it occurred, would have made no impression on him. as in what related to an officer of the Franklin, he should naturally have taken definitive measures with the Secretary of the Navy.

3d Inter. That he does not recollect that he expressed any disapprobation of the conduct or movements of Lieut. Weaver; nor that he supposed his naval and political information of sufficient importance to send for Com. D. Porter, or any other person; that he presumes he did not express any disapprobation of Lieut. Weaver's conduct or movements, as this, if thought necessary, would have been done through the Secretary of the Navy.

4th Inter. He does not recollect that Lieut. Weaver stated, in the course of his conference, the absence of the Secretary of the Navy, nor that the communications which would otherwise have been made to the Secretary of the Navy, were made to him, the President of the United States, in consequence of that absence.

5th Inter. He does not recollect that Lieut. Weaver stated that his return to the United States was under a temporary leave of absence from Com. Stewart, that looked to his return to the Franklin 74, in the Pacific.

I have stated the answers to the several interrogatories thus fully, that Lieut. Weaver may be apprized of the total want of recollection of the President upon any of the matters to which his interrogatories are directed; and that there might be no error on the subject, I have submitted this letter to the President, and he has approved it.

As the letter, or commission, does not issue from the Court, this answer is directed to you, and intended as a private communication to yourself and Lieut. Weaver, by which you and he may perceive that a formal commission to the President would be entirely useless.

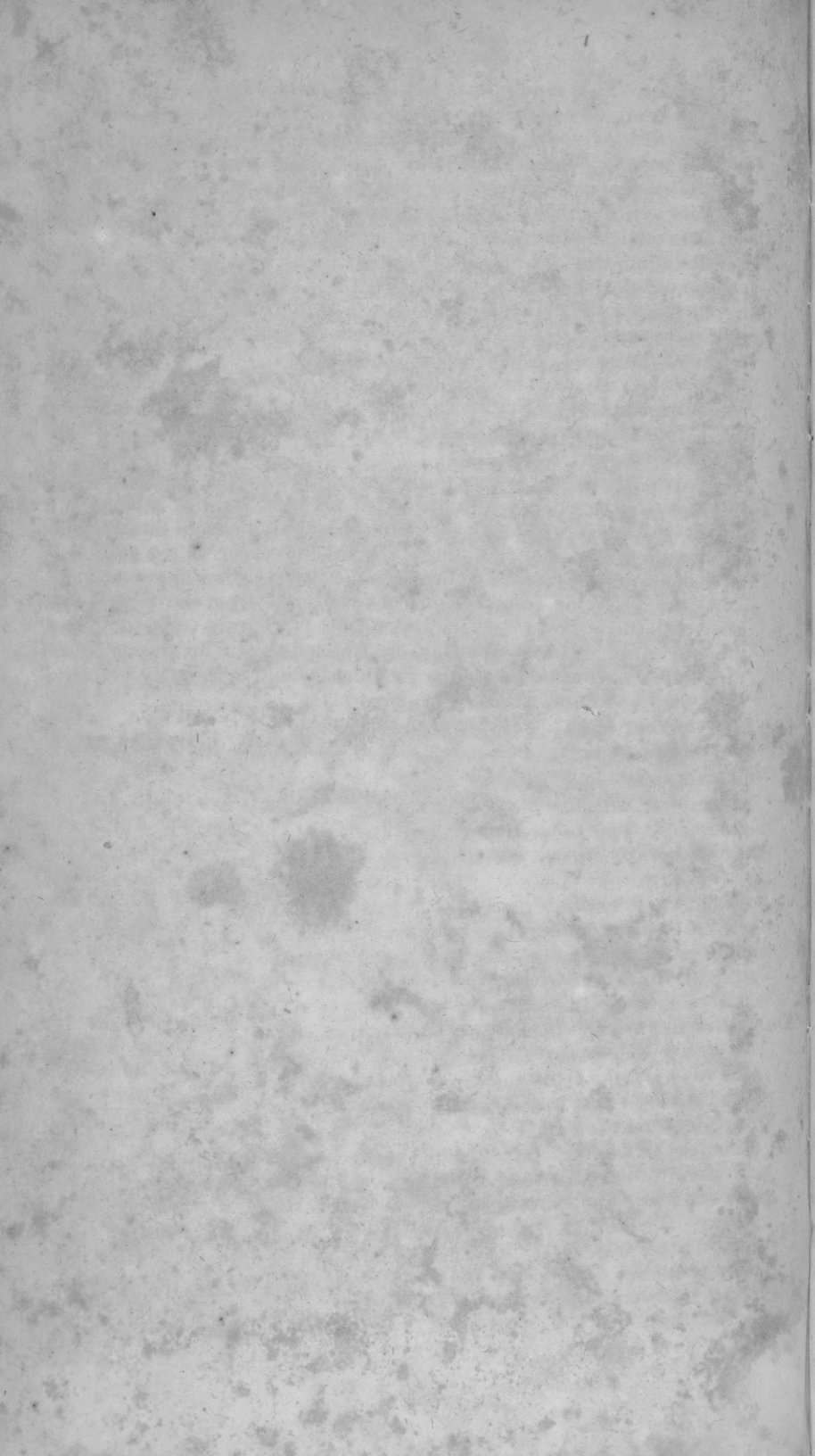
I am, respectfully, Sir,

Your obedient servant,

SAML. L. SOUTHARD.

RICHARD S. COXE, Esq.

Judge Advocate of the Gen. Court Martial, N. Y.



CASE OF LIEUTENANT CONNER.

The General Court Martial assembled on board the United States' ship the Washington, by virtue of the precept of the Honorable the Secretary of the Navy, bearing date the 26th October, 1824, the original of which is annexed to the record in the case of Lieutenant Weaver, and a copy thereof, marked A, hereunto annexed, and adjourned by virtue of a warrant from the Honorable the Secretary of the Navy, bearing date the seventeenth day of November, the original of which is also attached to the record in the case of Lieutenant Weaver, and a copy thereof, marked B, herunto annexed, and now in session at the Marine Barracks at the Navy Yard at Brooklyn, proceeded, this twenty-fourth day of November, pursuant to the adjournment of yesterday, to the trial of Lieutenant David Conner, upon certain charges and specifications preferred against him.

PRESENT:—Captain William Bainbridge, *President*.

Members—Captain Jacob Jones, Captain John D. Henley, Captain Jesse D. Elliott, Master Commandant George C. Read.

Supernumeraries—Master Commandants Wolcott Chauncey, William B. Finch.

The Court was cleared, to determine whether Captain Lewis Warrington, who appeared in court, should be admitted to a seat as a member. The Judge Advocate submitted to the court a communication from the Secretary of the Navy, covering a communication from the Attorney General of the United States, annexed, and marked C. After reading the opinion, and deliberating upon the question, the Court decided, that, as the opinion of the Attorney General had been officially submitted to them, the Court should proceed as originally organized.

The Court was then opened. Lieutenant David Conner appeared in court to answer the charges preferred against him. The question was then proposed to him, whether he had any legal objections to make to any member of the court, and he declared that he had none.

The charges and specifications were then read, annexed to the record, and marked D.

Lieutenant Conner stated, he had employed no counsel, but wished permission to have a friend in court to assist him in noting the evidence, to which the court acceded.

Lieutenant Horace B. Sawyer, a witness, produced and sworn on behalf of the prosecution, testified as follows:

Ques. Were you attached to the Dolphin, as a lieutenant, in the Pacific, in the year 1822?

Ans. I was then second lieutenant of the Dolphin.

Ques. Were you on board of her during the months of May and June in that year?

Ans. I was.

Ques. Will you state, so far as you are acquainted with the facts, whether Captain E. Smith, mentioned in the specifications, was on board the Dolphin, and when and where? Whether he came on board with any trunks or packages, and what did they contain?

Ans. Captain Smith came on board the Dolphin at Valparaiso, the evening before we sailed; I think it was on the 7th of May. It was remarked there was an unusual quantity of baggage came on board the vessel; among other things was one or more packages marked "Samples." It was not known, I believe, by any of the officers, certainly not by myself, when Captain Smith came on board, what his trunks contained. On the arrival of the Dolphin at Arica, goods were exhibited on the quarter-deck, and in the cabin of the Dolphin, in the presence of Spaniards from the shore, and apparently for their inspection solely. The exhibition on the quarter-deck was not in the presence of the Spaniards; in the cabin it was. The Spaniards, I believe, were on board at the time, but not on the quarter-deck.

Ques. Who commanded the Dolphin at the times spoken of?

Ans. Lieutenant David Conner.

Ques. Did Captain E. Smith belong to the navy, or was he in any public employment?

Ans. Not to my knowledge.

Ques. Were the articles contained in the trunks and packages designed for the use of the Dolphin, or were they so employed?

Ans. It would not appear that they were designed for the use of the Dolphin, as Mr. Smith and his baggage were landed at Molliendo, and nothing was seen of the goods afterwards.

Ques. Were the goods exhibited publicly on the quarter-deck, and in the cabin, apparently for sale, or how?

Ans. On the quarter-deck of the vessel they were changing the goods from one trunk to the other; Mr. Smith and the commander of the vessel, Lieutenant Conner, appeared to be examining them. The trunks, two, I think, were at this time open on deck. I think none others were on the quarter-deck, than Mr. Conner and Captain Smith. When the goods were examined in the cabin, the Spaniards from the shore were present.

Ques. Were they the same goods, apparently, exhibited on the quarter-deck, and in the cabin, and of what description were they?

Ans. The goods that I saw on the quarter-deck were apparently ginghams. I was walking in the gangway—they might have been of a different character. When the goods were thus shifting on the quarter-deck I was walking in the gangway, and from that position I saw them.

Ques. Will you mention all the persons who were in the cabin at the time of the exhibition there; your situation; how the parties were occupied, and what was the character of the goods.

Ans. My situation was not a very good one to observe the movements in the cabin; I was passing from one side of the quarter-deck

of the vessel to the other, abaft the trunk; the cabin door was open, and in passing I observed Captain Smith, and the two Spaniards before mentioned; they were examining goods, apparently silk goods, in the cabin; I do not recollect that I saw Mr. Conner in the cabin.

Ques. Do you know any thing in relation to the receiving on board the Dolphin plate and specie? State the facts so far as you know them.

Ans. I have no personal knowledge of the facts stated in the last specification. I wish to state to the court that the witness, upon whom I principally relied to substantiate that accusation, is now absent from the United States, by permission from the Government. I have written to the Secretary—(stopped by the court.)

Question by the court. Were the goods sold on board the Dolphin and taken from her?

Ans. I do not know that they were sold.

Ques. Did the Spaniards carry with them to the shore any more articles than they brought off?

Ans. Not to my knowledge.

Cross examined by the accused.

Ques. You stated it was remarked at the time Mr. Smith's baggage was received on board the Dolphin, that the quantity was unusually great. What did it consist of, and who made this remark?

Ans. It consisted of two trunks, I am not certain there were more, and one package; that I am positive of. There was also something done up in a large leather covering, probably a bed. The remark was made in the ward-room more than once, I cannot distinctly state by whom.

Ques. What were the silk goods you saw in the cabin, and in what quantity?

Ans. They appeared to me to be handkerchiefs, and different patterns of silk; the cabin table appeared to be covered with them, and the sofas also appeared to be covered with them.

Ques. Did you hear the conversation in the cabin, and what was its purport?

Ans. I heard no conversation in the cabin.

Ques. Do you know the goods you saw were exposed for sale, or private traffic?

Ans. I do not know that they were exposed to sale or private traffic.

Ques. In passing the cabin door did you stop to examine what was doing there, and are you certain the articles you saw in the cabin was merchandise?

Ans. I did not stop to examine; I merely cast my eye in while passing the cabin, and observed Captain Smith, and the Spaniards. I am certain the articles I saw on the cabin table were merchandise. I am certain they had that appearance.

Ques. Were you not under arrest at the time Mr. Smith's baggage was received on board the Dolphin, and also when his trunks were landed at Molliendo?

Ans. I do not recollect that I was under arrest when Mr. Smith came on board; I think I was only suspended. I believe it was after we left Valparaiso that I received my charges; I am still under arrest on the charges that were preferred against me in the Pacific Ocean.

Ques. At the distance you were from the quarter-deck, could you distinctly see the gingham you say Mr. Smith and myself were examining?

Ans. I could.

Ques. At the time the baggage of Mr. Smith was received on board the Dolphin, had Mr. Conner, or any other officer of the vessel, as you know or believe, any knowledge of there being any thing in the trunks, other than the ordinary baggage of a traveller?

Ans. Not to my knowledge.

Ques. How long after the contents of the trunks were exposed, did they go on shore?

Ans. I do not distinctly recollect; it was after our arrival at Molliendo Mr. Smith and his baggage were landed.

Question by the Judge Advocate. How far is Molliendo from Arica?

A. I do not recollect the distance: probably six or eight days' sail with the light winds we experienced.

Q. Were the trunks and packages of an unusual size or character for a traveller?

A. I do not think they were.

Q. by the accused. Why was it then a subject of remark on board the Dolphin, that Mr. Smith's baggage was unusually great?

A. For the reasons I have already assigned. There were two trunks I am positive of; a large package marked "samples," and the leather bundle. I know of no other reason for the remark, but it was observed that it was unusually great.

Q. by the accused. What was the size of the package marked "samples?"

A. It was about a foot in length and a half foot in depth, probably.

Q. by the Court. Do you know whether the Spaniards who came on board the Dolphin were merchants, or whether they expressed their views in coming on board?

A. They bore the character of merchants. Do not know whether they expressed their views in coming on board.

Q. by the Court. Had Lieut. Conner any conversation with the Spaniards in reference to the goods, either in the cabin or on the quarter-deck?

A. I did not see him holding any conversation with the Spaniards.

Q. by the accused. Was not a certificate procured by you from the officers of the Dolphin in relation to Mr. Smith's bringing merchandise on board that vessel, and circulated on board the Franklin? If so, what has become of that certificate?

A. Such a certificate was given at my request, in consequence of a communication with Lieut. Hunter, which I have on board the Washington. The certificate is destroyed.

Q. Why was it destroyed?

A. The note to which I allude, and the answer, will shew the whole transaction. The certificate was requested, and given, in consequence of hearing that Captain Smith had stated some things implicating my veracity. After Capt. Smith had admitted, and Lieut. Hunter had intimated it to me, that no such charge had been made, there was no further necessity for the certificate, and it was destroyed.

Q. Is the copy of the certificate now before the Court a correct one of that circulated on board the Franklin with your letter?

A. It is.

Q. Was the certificate drawn up and circulated previous to Commodore Stewart deciding on the — preferred by you against Lieut. Conner?

A. The certificate was drawn up after the charges had been sent on board the Franklin. I do not know what decision Commodore Stewart had made.

Q. Was it not at the solicitations of its signers the certificate was destroyed, and did they not allege as a reason for its destruction that I would obtain a copy of it?

A. No. It was because I conceived there was no further use for it; because the particular object for which it had been given, had been removed by Lieut. Hunter's note—not at the solicitation of the signers.

William J. McCluney, a lieutenant in the navy of the United States, a witness, produced, sworn, and examined, on the part of the prosecution, testified as follows:

Q. Were you on board the Dolphin in May and June, 1822, and in what capacity?

A. I was first lieutenant of the Dolphin at that period.

Q. Will you state to the Court, so far as you are acquainted with them, the facts connected with the first specification.

A. On or about the 6th May, we received on board, a Capt. Smith, and a number of trunks and packages, as many as three or four; among them was one, or two, I am positive as to one, marked "samples." At the time, I knew nothing of the contents. They were not designed for the use of the vessel, or employed in that way to my knowledge. This was in the port of Valparaiso. About the 7th, we sailed from Valparaiso. We arrived at Arica about the 14th. On our arrival, a boat of the Dolphin was despatched on shore, and brought on board two Spaniards, who, I understood from Captain Smith, were merchants. After they had been on board some time, in passing by the cabin door, I saw a parcel of dry goods displayed in the cabin. The merchants appeared to be examining the goods. I, at the same time, remarked, that the package or packages marked "Samples," which had been lying on the quarter deck, had been removed. Captain Smith and the two Spaniards were in the cabin at the time of this display, and, I think, part of the time, Lieut. Conner. The goods appeared to me to be counterpanes, cross-barred gingham, or something of that kind. I cannot say whether they

were exposed for the purpose of sale. I do not know whether the Spaniards took any goods on shore with them. I think none of Smith's baggage was landed at that port. They appeared to be whole pieces of goods of various kinds. I have an indistinct recollection of some plate being brought on board the Dolphin about the time and at the place mentioned in the second specification of the second charge—cannot distinctly remember the particulars, nor do I know what became of it: know nothing, of my own knowledge, of any articles being carried on board the Mercury and Flying Fish.

Cross-examined by the accused.

Ques. Had Lieut. Conner, as you know or believe, at the time the trunks and packages were received on board, any knowledge of their contents?

Ans. I do not think he had.

Ques. Was it the subject of remark on board the Dolphin that Capt. Smith had an unusual quantity of baggage with him?

Ans. I think there was such a remark made on board, but cannot recollect by whom.

Ques. Are you positive as to the number of Mr. Smith's trunks? If so, describe their size and number, as also the size and number of the packages marked "Samples."

Ans. I have already answered that I cannot state the exact number; that there were three or four, to the best of my belief: they were of various sizes—the one marked "Samples," I think was about three feet long. I do not recollect as to the others.

Ques. Did the Spaniards come on board the same day the Dolphin arrived in Arica? How many were there, and who were they? Did Mr. Smith state to you they were merchants?

Ans. Cannot say whether they came on board the day we arrived at Arica or the following day: there were two of them came on board: there was a third who was on board during our stay there, who, I was informed and believed, was a Spanish officer. Capt. Smith did state to me that one of the two was a merchant, and, I think, the other also.

Ques. State to the Court what you mean by merchandise, and describe the quantity and character of the articles you say you saw in the cabin, or were contained in Mr. Smith's trunks.

Ans. I have already mentioned they were dry goods, and have mentioned the character of them. I cannot say as to the quantity; there were several pieces—among them, some of the character I have mentioned.

Ques. Did you conceive there was any thing criminal in Mr. Smith's opening his trunks? and if so, would you not conceive it your duty to report it to the proper authority?

Ans. I did think it very improper to expose goods in that manner, but, as Lieut. Conner was, during a part of the time, in the cabin, and must have seen it, I did not think it my duty to report the fact.

Ques. What is the distance between Arica and Molliendo?

Ans. I do not recollect the distance. I think we were on the passage from one to the other from the 16th to the 19th, with very light winds.

Ques. by the Court. Where was Captain Smith and his baggage landed?

Ans. At Molliendo.

Joseph B. Hull, an acting lieutenant in the Navy of the United States, a witness, produced, sworn, and examined, on the part of the prosecution, testified as follows:

Ques. Were you on board the U. S. schooner Dolphin in May and June, 1822, and in what capacity?

Ans. I was on board the Dolphin as an acting lieutenant.

Ques. State to the Court the facts, so far as you are acquainted with them, connected with the specifications.

Ans. I joined the Dolphin at Valparaiso, on the 6th of May, I think; Captain Smith's baggage was then on board, consisting of trunks and a cot or bedding. There were, I think, as many as five or six trunks or bundles, some of them, I should think, three feet long—other dimensions in proportion. I did not know, at the time of their contents—cannot say that I remarked any thing in particular about them at the time: I supposed, at the time, they contained Capt. Smith's baggage. I afterwards ascertained one of them contained bundles, wrapped up in paper of various forms. At Arica there were strangers, two I recollect, on board the vessel from the shore. I remember seeing the trunk, containing the packages before referred to, opened, but cannot say whether at the time mentioned; I think it was on the passage from Arica to Molliendo, and for the purpose of examining and restowing. I recollect seeing pattern-cards and papers displayed in the cabin while at Arica: Capt. Smith, to the best of my recollection, and the two strangers, or one of them and Lieut. Conner, were present. I do not know the object of the exhibition. The articles contained in the trunks and packages were not designed or employed for the use of the Dolphin. I do not recollect to have seen the articles specified in the second specification of the second charge, brought on board—know nothing, of my own knowledge, on the subject. I know only that a boat did go on board the Mercury—what she carried I do not know: Mr. Hudson was the officer in command of her.

Cross examined by the accused.

Ques. Are you certain Captain Smith brought six trunks on board the Dolphin, at Valparaiso; if not, might there not have been only two or three?

Ans. I mentioned that I did not recollect the number. To the best of my memory there were five or six articles, among them a saddle, a bundle of bedding, and the rest trunks and bundles.

Ques. Did Lieutenant Conner know the contents of the five or six trunks and packages of Captain Smith, received on board the Dolphin, at the time they were received?

Ans. Not to my knowledge.

Ques. What is the distance between Arica and Molliendo?

Ans. I do not know the exact distance; I should suppose about 200 miles.

Joseph Watson, a Purser in the Navy of the United States, a witness, produced, sworn, and examined, on the part of the prosecution, testified as follows:

Ques. Were you on board the Dolphin in May and June, 1822, and in what capacity?

Ans. I was on board as acting Purser.

Ques. Will you state the facts connected with the specifications, as far as you are acquainted with them?

Ans. The baggage of Captain Smith, consisting of four or five trunks, and a bed, and cover, were received on board at Valparaiso; I was on shore at the time they came on board—they were carried to Arica. When we arrived at Arica I was unwell, and very little on deck; I went on deck, and passing along looked down, and saw a number of goods in the cabin; did not, however, take particular notice of them. There were some people on board from the shore, and some from the French ship Telegraph, I think. There were, I think, as many as five people in the cabin, including Captain Conner. They were examining a silk Shawl, or something that appeared to be one. Mr. Conner looked up at me; I presumed I was intruding, and went away. On the quarter-deck I saw merely the samples, and piece of striped goods; it appeared to be gingham or seersucker. Mr. Conner was, I think, at that time in the cabin. This was during the same day, within about half an hour of the time when I saw what I have mentioned in the cabin. At the time I looked in the cabin, I should suppose I saw half a dozen different pieces of goods—considerable variety of them; the sofas appeared to be covered with them. I think Captain Smith was at the time on deck.

Ques. Do you know any thing of the facts contained in the second specification of the second charge?

Ans. I know nothing further than that a boat did go from the Dolphin to one of those vessels, but I do not know that the boat carried any articles from the Dolphin.

Cross examined by the accused.

Question by the accused. Had Lieutenant Conner any knowledge of the contents of Captain Smith's baggage, at the time it was received on board?

Ans. I do not know.

Ques. Was there any conversation in the ward-room at the time Mr. Smith's baggage was received on board the Dolphin, concerning it; and was it remarked by any one that the quantity of his baggage was unusually great?

Ans. None that I recollect. I do not remember any conversation on the subject until after the vessel arrived at Arica, and it was opened.

Ques. Did you ever hear Mr. Sawyer solicit the officers of the ward-room of the Dolphin to join him in preferring charges against me for this transaction? If so, what were the reasons they did not?

Ans. I never heard such a solicitation made.

Question by the Judge Advocate. While Captain Smith was on board the Dolphin, what part of the vessel did he occupy?

Ans. He lived in the cabin on the passage.

Samuel M. Breckenridge, a Midshipman in the Navy of the United States, a witness produced, sworn, and examined, on the part of the prosecution, testified as follows:

Ques. Were you on board the United States' schooner Dolphin, in May and June, 1822; and in what capacity?

Ans. I was a Midshipman on board.

Ques. Will you state to the court what you know of the facts alleged in the specifications?

Ans. In May, 1822, Capt. Smith came on board the Dolphin, at Valparaiso; a young Spaniard came with him; whether as a clerk, or in what capacity, I do not know. He brought three or four trunks, some bedding, and a small pine box—did not see them opened, nor know what they contained. We sailed on the 7th, for Arica, a small port in Peru—arrived, I think, on the 13th. On the morning of the 14th, three or four Spanish gentlemen came on board, and breakfasted with Capt. Conner, in the cabin. About two hours after, I saw a trunk opened in the cabin, and saw some goods, whether Merino or Canton shawls, cannot say; it was a small trunk, about four feet long. Did not see Capt. Conner in the cabin—do not recollect seeing any one but Smith there at the time. The trunk was a narrow one—a small India trunk. I shortly after went on shore and did not return until the Dolphin was under weigh. I also saw a paper of gloves on the table, at the same time. We sailed on the 14th, I think for Molliendo, and arrived about the 18th or 19th. I was then directed by Lieut. Conner, or the officer commanding the deck, to take the second cutter, and the articles in the boat, to deliver them to Capt. Smith, at Molliendo. They were, one trunk, a box, some bedding, and four small hampers, which we carried and delivered to Capt. Smith, at Molliendo. Capt. Smith went with us from Arica to Molliendo, and was landed there in another boat.

Sometime previous to the month of September, 1822, I was directed, by Capt. Conner, to go on board the Mercury, (she was then standing out of the harbor of Callao,) and deliver a small basket (a market basket) to the captain. Do not know the contents. Did not handle the basket myself—it appeared to be light.

Cross examined.

Ques. Did you hear any conversation between the officers of the Dolphin, or any remark on the subject, until a certificate was circulated on board the Franklin, concerning this transaction, some months afterwards?

Ans. I did not.

Ques. Did not the hampers contain Champaign wine, (French) and from the ship Telegraph?

Ans. I do not know what the Hampers contained—I have seen wine in such hampers. I was on shore when our boat boarded the Telegraph, and do not know what was brought from her.

The communication between Lieut. H. B. Sawyer and Lieut. Hunter, referred to in the testimony of the former was read, annexed, and marked, No. 1.

The copy of the certificate and letter of Lieut. Sawyer, referred to in his testimony, was also submitted, annexed, and marked, No. 2.

The court adjourned to half past nine, to-morrow morning.

THURSDAY, *November 25, 1824.*

The court met, pursuant to the adjournment of yesterday.

Francis Coffin, a witness produced, sworn, and examined on behalf of the accused, testified as follows:

Ques. Do you know Capt. E. Smith? What time have you known him, and what is his character?

Ans. I have known him five or six years: have never known any thing against him: believe him to be a man of integrity and honor.

Lieut Sawyer requested permission to be present at the examination of the witnesses for the accused, and to cross examine them: which was granted by the court; and he appeared accordingly.

John H. Clack, a Lieut. in the Navy of the United States, a witness produced, sworn, and examined on the part of the accused, testified as follows:

Ques. Do you know Capt. E. Smith? What time have you known him, and what is his character?

Ans. My knowledge of Capt. E. Smith commenced and ended in the Pacific, where I knew him about six months. His character was that of a merchant of great enterprize, and wielding a large capital. I believe I have known him in possession of between two and three hundred thousand dollars.

Ques. By the Judge Advocate. Were you on board the Franklin during the period you speak of, and what opportunities had you, during the six months, of becoming acquainted with Captain Smith?

Ans. I was attached to the Constellation; I saw him occasionally on board the Franklin; Captain Smith was a passenger in the Constellation some twenty or thirty days.

Ques. Was it the Captain Smith who commanded the brig Macedonian?

Ans. It was.

Charles Stewart, a captain in the Navy of the United States, a witness produced, sworn and examined, on the part of the accused, testified as follows:

Ques. Did you command the American squadron in the Pacific Ocean in the month of May, 1822?

Ans. Yes.

Ques. Did you order Lieutenant Conner, the commander of the schooner Dolphin, to receive on board his vessel at Valparaiso, on or about the 6th of May, 1822, a certain Captain Smith, and is the paper now shown to you, that order?

Ans. Yes: the paper read to the Court, annexed to the record, and marked No. 3.

The testimony being closed, Lieutenant Conner was asked when he would be prepared with his defence; he stated that he should be ready in the course of an hour; whereupon the Court adjourned for that time. On the opening of the Court at the time specified, the accused read his defence, which was annexed, and marked E.

The Court was then cleared, and the record of the proceedings read, and the Court proceeded to deliberate upon the case, and the evidence adduced; and having maturely considered the same, do find

That it is proved in regard to the specification of the first charge, that the trunks and package belonging to Captain Eliphalet Smith were received on board the Dolphin at the time and place mentioned; that Captain E. Smith was taken on board by the order of Commodore Stewart, as the bearer of public despatches; that the said trunks and package did in fact contain sundry articles of merchandise, and samples of goods, not designed for the use of the Dolphin. But the Court is of opinion, from the evidence, that the contents of said trunks and package were not known to the said Lieutenant Conner, when they were taken on board, that such ignorance resulted from no remissness or impropriety. And therefore the Court is of opinion, that it does not fall within the 23d Article of the Act for the better government of the Navy; and do adjudge, that the said Conner is NOT GUILTY of this specification.

That in regard to the first specification of the second charge, it is proved, that Lieutenant David Conner did permit an exhibition of dry goods, or samples of dry goods in the cabin, but not on the quarter-deck of the Dolphin, in the presence of two or three strangers from the shore; that there is no evidence to show that they were offered for sale; and therefore, that this specification is in part proved, and in part not proved.

That so far as respects the second specification of the first charge, there is no evidence to support it.

The Court is therefore of opinion, that the first charge is not proved; they are also of opinion, and do adjudge, that the second charge is so far proved as is set forth in their decision upon the first specification under it, and is not proved as to the residue.

The Court is of opinion, that Lieutenant Conner, in permitting an exhibition of merchandise on board a public vessel of the United States, has been guilty of conduct highly culpable, and it does, in the strongest and most distinct manner, express its decided reprobation of such conduct. That nothing but the very meritorious character which Lieutenant Conner has heretofore sustained, in-

ducing the belief, that such impropriety was the result of inadvertency, causes them to inflict so mild a punishment as *this reprimand*.

WILLIAM BAINBRIDGE,
JA. JONES,
J. D. HENLEY,
J. D. ELLIOTT,
GEO. C. READ,
RICHARD S. COXE,

Judge Advocate.

Approved, SAM. L. SOUTHARD.

The Court adjourned till to-morrow morning, at half past nine.



A.

To William Bainbridge Esq. Captain in the Navy of the United States.

Certain charges of misconduct having been alleged against William A. Weaver, a Lieutenant in the Navy of the United States, and others, a General Court Martial, to consist of Captain William Bainbridge President, Captains Jacob Jones, Lewis Warrington, William M. Crane, John D. Henley, Jesse D. Elliott, and Master Commandant George C. Read, and Masters Commandant Wolcott Chauncey and William B. Finch, supernumeraries, or any five or more of them, are hereby authorized, to assemble on board the United States ship Washington 74, at the Navy Yard at Brooklyn, in the state of New York, on Monday, the 15th day of November next. for the trial of the said persons for the offences of which they do severally stand charged: which charges, together with the testimony in support of them, will be laid before the Court by the Judge Advocate.

And Richard S. Coxe, Esq. is hereby appointed Judge Advocate to the court hereby ordered to assemble, and if he should decline acting, the said Court will appoint such other suitable gentleman, learned in the law, to discharge the duties of Judge Avocate to the said Court, as they, or a majority of them, may, in their wisdom deem fit and proper.

In faith whereof, I have hereunto signed my name and affixed the seal of the Navy Department of the United States, this twenty-sixth day of October, in the year of our Lord one thousand eight hundred and twenty-four and of the Independence of the United States the forty-ninth.

SAML. L. SOUTHARD.

To the Court Martial now assembled on board the United States ship Washington 74, at Brooklyn, New York, of which William Bainbridge, Esq. is President.

You are hereby authorized to adjourn the Court to such place as you shall consider most proper within the limits of the Navy Yard at Brooklyn, and to hold your session upon such adjournment.

Given under my hand, and the seal of the Navy Department,
this seventeenth day of November, in the year of our
Lord one thousand eight hundred and twenty-four.

SAML. L. SOUTHARD.

B.

Whereas, Lieut. Horace B. Sawyer, in his charges exhibited to Commodore Stewart, against Lieut. Comdt. David Conner, has stated, in substance, in a specification of one of said charges, that a quantity of dry goods were brought on board the U. S. schooner Dolphin, by Capt. Eliphalet Smith, and has named the undersigned as witnesses of the fact: and whereas it has come to our knowledge that the said Smith has flatly denied that any goods (except pattern cards, of the Canton's cargo,) were brought on board by him, the undersigned, at the request of Lieut. Sawyer, hereby make known to all whom it may concern, that the fact asserted by Lieut. Sawyer can be fully substantiated, notwithstanding the denial of it by the said Smith.

J. McCLUNEY, 1st Lt. U. S. Navy.
JOS. B. HULL, Act. Lt. U. S. Navy.
WM. L. HUDSON, Act. S. Master.
J. WATSON, Purser U. S. Navy.
RICD. STEVENS, Sur. Mt. U. S. N.

On board the U. S. schooner Dolphin, }
Callao Harbor, 26th August, 1822. }

B.

U. S. Schooner Dolphin, }
Callao Harbor, 27th August, 1824. }

GENTLEMEN: As it appears that Capt. Eliphalet Smith has gratuitously meddled with my affairs in a manner which seems to place my veracity and his at issue, I conceive it due to myself, as well as the officers of this vessel, that his character should be no longer concealed. I therefore enclose for your inspection, "*and all whom it may concern,*" a certificate of the ward-room officers of this vessel, which,

I flatter myself leaves the subject no longer in doubt, if any ever existed.

I am, Gentlemen,

With great respect and esteem,

Your obedient servant,

H. B. SAWYER.

To the Ward Room Officers
of the U. S. ship Franklin.

No. 2.

It appeared, upon investigation, Mr. Smith never did deny that two of his trunks on board the Dolphin contained patterns of part of the Canton's cargo, which he had purchased.

D. CONNER.

DOLPHIN, Monday, 26th Aug. 1822.

DEAR SIR: I have been given to understand that Captain Smith has told you he had not *any* goods (with the exception of some pattern-cards of the Canton's cargo) on board this vessel. Will you be good enough to inform me if he *has told you this*? Your answer will tend to clear up my doubts upon this subject, which I own I can hardly believe now. The bearer will wait for an answer.

I am, dear Sir,

Very truly, yours,

H. B. SAWYER.

Lieut. WM. M. HUNTER,
U. S. Ship Franklin.

Yes; he has told me so.

HUNTER.

You will do me the favor to return it. Yours,

SAWYER.

Wednesday, 28th August.

In my answer to this note, "*Yes, he has told me so,*" you must understand me, that he had no other goods but patterns, or samples of cargo.

HUNTER.

D.

Charges and specifications against David Conner, a Lieutenant in the Navy of the United States, exhibited by Lieut. H. B. Sawyer.

CHARGE 1. Receiving, or permitting to be received, on board the U. S. schooner Dolphin, then under command of said Conner, goods,

or merchandise, other than for the sole use of his vessel, contrary to the 23d article of the act of Congress for the better government of the Navy of the United States.

Specification. For that he, the said David Conner, on or about the 6th day of May, 1822, then being in command of the said schooner Dolphin, lying in the port of Valparaiso, did receive, or permit to be received, on board the said schooner, certain trunks and a certain package or bundle, belonging to one captain E. Smith, which said trunks and package contained sundry articles of merchandise, and samples of goods or merchandise, not designed or intended for the use of said schooner, and not falling within any of the exceptions contained in the said 23d article for the better government of the Navy.

CHARGE 2d. Unofficerlike conduct.

Specification 1st. For that he, the said Conner, then in command of the U. S. schooner Dolphin, and lying in the port of Arica, did, on or about the 15th day of May, 1822, permit a public display of dry goods on the quarter deck and in the cabin of said schooner, in the presence of, and for the inspection of, strangers from the shore, for the purpose of private traffic, thereby tending to the subversion of discipline, and prostituting the said vessel of the United States to purposes of private trade and traffic.

Specification 2d. For that he, the said Conner, sometime in the month of June, 1822, then in command of the said schooner Dolphin, in the port of Callao, did receive, or permit to be received, on board said schooner, certain articles of plate, and a certain sum of money in doubloons, which said Conner knew to have been smuggled from the shore; and that, afterwards, the said Conner caused the said plate to be sent, in one of the boats of the Dolphin, on board the American ship Mercury, and the said doubloons on board the American ship Flying Fish, and that after the custom-house officers had visited the said ships, and after the said ships were under weigh; thereby assisting in smuggling, and in defrauding the revenue of a friendly power, in contravention of the laws of the United States; and the said Conner receiving, for such acts, compensation for his services.

RICHARD S. COXE,
Judge Advocate.

E.

Mr. President and Gentlemen of the Court:

After fifteen years spent irreproachably in the Naval service of my country, nearly ten of which have been actively employed, afloat, in different ships of war, in the various grades of Midshipman, Master, and Lieutenant, I am, for the first time, brought before a Court

Martial, to answer to charges of the gravest character. The history of every service proves, that, in such an event, unblemished innocence has often suffered; and, against which, no circumspection can guard, however vigilant its watch over the minutest act. It is seriously to be regretted, that it is as much within the power of envy, malice, and revenge to arraign their victim at your bar, as for the honest guardian, who would protect the purity of character, and who watches over those infractions that affect the honor and safety of the service. But whilst I deplore the existence of such an evil, I have the consolation to know that the tribunal, before which I stand, will be as faithful in protecting the innocent, as it will be prompt to punish the guilty.

It will be seen, by the evidence before the court, that the same charges, for which I am now on trial, were preferred, by the same person, more than two years since; and, though I requested Commodore Stewart, at the time, to grant a court to investigate my conduct, he refused it, upon the ground, that he believed the charges originated in malice, and were not designed for the good of the service.

Commodore Stewart was fully informed of all the circumstances of the case, and had access to very important evidence, which I very much regret is not before this court. The absence of Mr. E. Smith from this country, who could testify to my entire innocence, is an essential deprivation in my defence.

I am charged with having violated the 23d article of our Naval laws, by receiving on board my vessel articles of merchandise, &c. I appeal to the good sense of this court, and ask if it was any part of my duty to have examined the baggage of a gentleman and a fellow citizen, who was charged with a public despatch, by my commanding officer; and who, I was ordered by him, to receive on board my vessel as a passenger? On the contrary, without any thing suspicious in the character of the man, or the appearance of his baggage, it would have been an outrageous breach of common courtesy to have suggested such an idea. I, therefore, conceive that I am not guilty of any offence, or infraction of the law, in taking those trunks on board, which I conceived as exempt from objection as my own wardrobe. Again; it is not in evidence before this court that the articles, which the trunk contained, were either sold or offered for sale on board my vessel. They were simply exhibited to two persons, one of whom I know to be connected with Mr. Smith in very extensive mercantile transactions, and the articles displayed were merely *samples* of a cargo Mr. Smith had purchased at Valparaiso. The shawls, mentioned in the evidence, were two, of Canton crape, placed in charge of Mr. Smith by a gentleman resident at Anquipa, for his wife in Lima. Mr. Smith requested me to take charge of them, which I did, and delivered them to the lady in Lima, as requested. I humbly conceive, that in this, there has not been an infraction of either the spirit or letter of the law; and that I, consequently, stand exculpated of any offence. So far from believing that I was acting in violation of my

duty, if, at the time of Mr. Smith's embarkation on board my vessel, he had told me that he had in his trunks samples of merchandise, I should not have objected to his bringing them on board, under the conviction that the 23d article of our Naval laws never contemplated the recognition of such a case. With all due deference to the court, I cannot conceive that it is capable of being tortured into an offence.

Perhaps it would have been prudent, and perfectly justifiable in me, instead of soliciting this present trial, to have urged its postponement until I could have procured the testimony of Mr. Smith, and others, who are now absent from this country: but, when I considered that my reputation was suffering, and had for two years suffered, almost if not quite, as much from the slanderous reports put in circulation, I will not say, because I cannot prove by who, I found myself forced to apply for this investigation, unprepared as I am. I could not offer much more, from a conviction, than I have already done; and I trusted to my innocence, and the impossibility of proving the charges true, for my acquittal. I hope I have not trusted in vain. To the members of this court I need not observe, that the honor of an officer is sensitive to the slightest whispers of slander, and, to resist the blasting influence of this poison, is the duty of every man, who feels that reputation, which is most valuable, is that which is least suspected.

The accuser on this trial has sought to injure me, and in the range of his influence he has found his auxiliaries amongst those who should have been the last to countenance insubordination. A certificate is on your table, signed by all the ward-room officers of the Dolphin, who were under my command at the time, accusing me of a dereliction of duty, and of disgraceful conduct. This was done, knowingly too, subsequent to the accuser's petition for my arrest, and before Commodore Stewart had decided whether or not he would order a court. At that particular juncture the certificate was procured, and circulated on board the Franklin to my prejudice.

As a proof that its contents had a more extensive circulation than the ward room of the Franklin, I will read to the Court a note to a publication in the Richmond Enquirer, published early in the month of January, 1823, a short time subsequent to the arrival of the accuser at Norfolk. and evidently alluding to the same transactions for which I am now arraigned.

I will not take up the time of the Court, by commenting on the evidence produced against me. The first charge, and the second specification under the second charge, are not proved, because it is not proved that I knew the contents of the baggage brought on board my vessel by Captain Smith; nor is it proved that any plate or doubloons came on board the Dolphin at Callao.

As it respects the testimony of the different witnesses upon the first specification, under the second charge, no two of them agree in the detail. Mr. Sawyer says I was not in the cabin at the time the contents of the trunks were displayed, and that no one was on deck at the time the trunks were opened, and which he also says appeared

to him to be done only for the purpose of shifting the contents of one to the other, Captain Smith and myself only being present at this time; and not one of the witnesses say, that they have any knowledge of the articles being exposed for sale, or private traffic, as I am charged. Mr. Sawyer makes the sample package one foot by six inches, and Mr. M-Cluney says it was three feet. What reliance can be placed on such evidence as to the description of the things displayed, when they differ so widely in this as every thing else? They call them merchandise, but cannot state that they were even intended for sale, as in fact they were not. And I trust that it will not be deemed an offence to carry on board of our national vessels, the personal baggage of public messengers; or that the commanders of such vessels shall be punished, because they permit a public messenger to show his friends the contents of his trunks, even though they should contain something more than his wearing apparel.

I might be justified in remarking upon the apparent disposition of the four first witnesses examined, to exaggerate the quantity of baggage brought on board my vessel by Captain Smith. All of them at first said it consisted of several trunks and packages, evidently meaning to convey the idea of there being a large quantity of merchandise; but when pressed by the Court to enumerate, they came down to two or three trunks, a small parcel, a saddle, and a bundle of bedding. This surely did not exhibit any disposition on their part to state the case fairly, till forced by a direct question from the Court. Nor will I say any thing on the glaring inconsistency of Mr. Sawyer, who says it was the subject of repeated remark in the ward-room, the unusual quantity of baggage Captain Smith brought on board; and yet, when asked if he thought it an unusual quantity, he answered he did not; nor could he give a reason to the Court why these remarks had been made.

Mr. President, and Gentlemen of the Court, my defence is before you. The case at issue is so plain and simple in all its bearings, that it needs none of the refinements of special pleading, nor none of that subtilty of argument required by a weak and desperate cause. Relying upon your experience and intelligence, your principles as gentlemen, and your feeling as officers, I submit my cause, knowing that you will decide correctly between the accuser and the accused.

D. CONNER.

THE NAVY OF THE UNITED STATES.

To the Editors of the Enquirer.

Amongst the various irregularities and abuses incident to all governments, and from which even our own is not altogether exempt,

I am surprised that the attention of Congress has not been directed to a very illegal and pernicious practice existing in our Navy, and probably connived at by the Department presiding over it. I allude to the well-known custom of our naval commanders, of transporting in national ships the money and bullion of private merchants on freight; and in appropriating that freight to their own private use. To pass over other instances, I have it from good authority, that Captain Downes, whilst he commanded the *Macedonian* in the Pacific Ocean, realized by this means, upwards of fifty-five thousand dollars; and by the report of persons who have lately left our squadron in that sea. Captain Stewart is in a fair way of pocketing a still larger sum.*

U. S. SHIP FRANKLIN,

Valparaiso, May 6, 1822.

SIR: You will proceed with the *Dolphin* under your command, to Callao, touching at Arica or Molliendo, on your way; at either of which places (most convenient) you will land Mr. Eliphalet Smith, who is charged with a despatch for General Ramirez, commander in chief of Upper Peru.

The accompanying packages you will please to deliver to Judge Prevost, whom you will find at Lima.

I remain, very respectfully,

Your obedient servant,

CHARLES STEWART.

Lieut. Com. DAVID CONNER,

Schooner Dolphin.

* I heard another report mentioned a few days ago, and in presence of a naval officer, which, for the honor of the service, I trust is wholly unfounded: that not only bullion, but *goods*, had been transported by some of our ships on that station, to places too where their importation was prohibited, and exposed to sale on their decks. It was added, that the Secretary of the Navy had been informed of the fact. Can this be true?